

No. 11063

United States
Circuit Court of Appeals
For the Ninth Circuit.

RICHARD ROLAND HAUGEN,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Eastern District of Washington,
Southern Division

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States for the
Eastern District of Washington, Southern
Division

No. (C-3950)—C-7785

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD ROLAND HAUGEN,

Defendant.

INDICTMENT

Vio: Sec. 72 and 73, Title 18 U.S.C.A. Making,
Forging, Counterfeiting, Uttering, Publishing
and Possession of Obligations of the United
States and Other Writings.

The Grand Jurors of the United States of America, for the Eastern District of Washington, duly impaneled, sworn and charged to inquire into and concerning the commission of crime within said District, upon their official oaths do find, charge and present:

COUNT ONE

That Richard Roland Haugen, heretofore, to-wit, on or about the 19th day of April, 1944, and subsequent thereto, at Hanford, in the County of Benton, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this Court, then and there being, did knowingly, willfully, unlawfully and feloniously, knowing the same to be false, fraudulent, spurious and counterfeit,

have in his possession with intent that they be uttered and published and put off as true, approximately 966 false, fraudulent, spurious and counterfeit meal tickets, purporting on their face to have been issued by the Olympic Commissary Company, a corporation, which was at said time and agency of the United States of America and of the United States Army Engineer Corps engaged in the construction of a defense project at Hanford, Washington, known as the Hanford Engineer Works; that one of the functions of the said The Olympic Commissary Company was to furnish and dispense meals to workmen employed at the Hanford Engineer Works; that the food and supplies from which said meals were prepared and dispensed were at all times herein mentioned the property of the United States of America; that the valid meal tickets, of which those referred to herein were spurious and counterfeit counterparts, were sold by the Olympic Commissary Company to workmen engaged at the Hanford Engineer Works at a fixed purchase price and the proceeds from the sale of said meal tickets became the property of the United States of America; that the said spurious and counterfeit meal tickets possessed by the defendant were not printed, sold, issued or authorized by the United States of America, The Olympic Commissary Company, or any [1*] lawful representative of either, but were ordered and purchased by the defendant from one George F. Allen, a printer at Tacoma, Washington, and were intended by said defendant to be used by

*Page numbering appearing at foot of page of original certified Transcript of Record.

himself and others for the purchase of food and meals from The Olympic Commissary Company without lawful payment therefor and with intent to defraud the United States of America;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT TWO

That Richard Roland Haugen, heretofore, to-wit, on or about the 19th day of April, 1944, and subsequent thereto, at Hanford, in the County of Benton, in the Southern Division of the Eastern District of Washington and within the jurisdiction of this Court, then and there being, did knowingly, willfully, unlawfully and feloniously, and knowing the same to be false, falsely made, spurious and counterfeited, publish and utter as true to one J. L. Holloway, six (6) false, fraudulent, altered, spurious and counterfeit meal tickets, purporting on their face to have been issued by The Olympic Commissary Company, a corporation, which was at said time an agency of the United States of America and of the United States Army Engineer Corps engaged in the construction of a defense project at Hanford, Washington, known as the Hanford Engineer Works; that one of the functions of the said The Olympic Commissary Company was to furnish and dispense meals to workmen employed at the Hanford Engineer Works; that the food and supplies from which said meals were prepared and dispensed were at all times herein mentioned the property of the

United States of America; that the valid meal tickets, of which those referred to herein were spurious and counterfeit counterparts, were sold by The Olympic Commissary Company to workmen engaged at the Hanford Engineer Works at a fixed purchase price and the proceeds from the sale of said meal tickets became the property of the United States of America; that the said spurious and counterfeit meal tickets possessed by the defendant were not printed, sold, issued or authorized by the United States of America, The Olympic Commissary Company, or any lawful representative of either, but were ordered and purchased by the defendant from one George F. Allen, a printer at Tacoma, Washington, and were intended by said defendant to be used by said J. L. Holloway for the purchase of food and meals from The Olympic Commissary Company without lawful payment therefor to the United States of America or to the Olympic Commissary Company, and with intent to defraud the United States of America on the part of him, the said defendant; [2]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT THREE

That Richard Roland Haugen, heretofore, to-wit, on or about the 19th day of April, 1944, and subsequent thereto, at Hanford, in the County of Benton, in the Southern Division of the Eastern District of Washington and within the jurisdiction of this Court, then and there being, did knowingly, will-

fully, unlawfully and feloniously, and knowing the same to be false, falsely made, spurious and counterfeited, publish and utter as true to one R. P. McDonald, one (1) false, fraudulent, altered, spurious and counterfeit meal ticket, purporting on its face to have been issued by The Olympic Commissary Company, a corporation, which was at said time an agency of the United States of America and of the United States Army Engineer Corps engaged in the construction of a defense project at Hanford, Washington, known as the Hanford Engineer Works; that one of the functions of the said The Olympic Commissary Company was to furnish and dispense meals to workmen employed at the Hanford Engineer Works; that the food and supplies from which said meals were prepared and dispensed were at all times herein mentioned the property of the United States of America; that the valid meal tickets, of which those referred to herein were spurious and counterfeit counterparts, were sold by The Olympic Commissary Company to workmen engaged at the Hanford Engineer Works at a fixed purchase price and the proceeds from the sale of said meal tickets became the property of the United States of America; that the said spurious and counterfeit meal tickets possessed by the defendant were not printed, sold, issued or authorized by the United States of America, The Olympic Commissary Company, or any lawful representative of either, but were ordered and purchased by the defendant from one George F. Allen, a printer at Tacoma, Washington, and were intended by said defendant to be used by

said R. P. MacDonald for the purchase of food and meals from The Olympic Commissary Company without lawful payment therefor to the United States of America or to The Olympic Commissary Company, and with intent to defraud the United States of America on the part of him, the said defendant;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Dated this 11th day of August, 1944.

EDWARD M. CONNELLY

United States Attorney

HARVEY ERICKSON,

Assistant United States

Attorney

A True Bill:

HOWARD C. CLEAVINGER

Foreman, Grand Jury. [3]

Presented to the Court by the Foreman of the Grand Jury, in open Court, in the presence of the Grand Jury and filed in the United States District Court for the Eastern District of Washington.

Aug. 11, 1944.

A. A. LaFRAMBOISE,

Clerk.

[Title of Court and Cause.]

O. Sandvig, Attorney for Defendant.

Now, on this 18th day of August, 1944, into court comes the defendant Richard Roland Haugen for arraignment under the Indictment heretofore filed against him, and being interrogated by the Court as to his plea thereto, defendant answers that he desires to enter a plea of Not Guilty, which plea is received by the Court and ordered entered on the records of the Court.

[Endorsed]: Filed Aug. 18, 1944. A. A. La-Framboise, Clerk.

[Title of Court and Cause.]

WAIVER OF JURY

I, Richard Roland Haugen, defendant in the above-entitled case, after being advised of my constitutional rights to trial by jury, hereby expressly waive my right to be tried by jury and consent that the trial of the above-entitled cause *by* before the Court without a jury.

Dated this 5th day of October, 1944.

RICHARD ROLAND HAUGEN
R. R. HAUGEN

Witness:

O. SANDVIG

Attorney for Defendant [4]

[Title of Court and Cause.]

OPINION OF THE COURT

Edward M. Connelly, United States Attorney,
Spokane, Wash.

Harvey Erickson, Assistant United States Attorney,
Spokane, Wash., Attorneys for Plaintiff.

Ole Sandvig, Yakima, Washington, Attorney for
Defendant.

Schwollenbach, District Judge.

In an indictment containing three counts, defendant is charged with possessing, publishing and uttering counterfeit meal tickets in violation of Sections 72 and 73, Title 18 U.S.C.A. In each count of the indictment, it is charged that the meal tickets purported to have been issued by the Olympic Commissary Company, a corporation, which it is alleged was an agency of the United States of America having, as one of its functions, the furnishing and dispensing of meals to workmen employed upon a defense project at Hanford, Washington, under the supervision of the United States Army Engineers Corps. The indictment alleges that the defendant possessed, uttered and published the counterfeit meal tickets with intent to defraud the United States of America. The defendant entered a plea of not guilty, a jury was waived and the Government's testimony was submitted to the Court. The defendant submitted no testimony and the case was taken under advisement.

The plaintiff's testimony proved without doubt that the defendant, who had been an employee at

Hanford, Washington, caused to be printed a thousand meal tickets resembling in form those issued by the Olympic Commissary. There is no question but that he published and uttered the meal tickets as alleged in counts 2 and 3 of the indictment and that, when arrested, he had in his possession 966 of such meal tickets as alleged in count 1 of the indictment. The problem in the case arises in determining whether the Government sustained its burden of proving that the Olympic Commissary Company was an agency of the United States and that the defendant possessed and uttered the counterfeit tickets with intent to defraud the United States. During the trial, defendant's counsel objected to the introduction of each portion of the evidence [5] that tended to support these conclusions. Since the case was being tried without a jury, I admitted the evidence, subject to defendant's objection, with the understanding that I would pass on the validity of the objections after submission of arguments and briefs by respective counsel.

The testimony shows that, in February, 1943, the Corps of Army Engineers commenced construction of a tremendous project at Hanford, Washington, known as the Hanford Engineering project. The property acquired for the project through condemnation proceedings in this Court totaled three hundred seventy thousand acres. The purpose for which the project is being constructed is a military secret of high order. Whether the Olympic Commissary Company is an agency of the United States and whether, by the use of the counterfeit meal tickets,

defendant might have perpetrated a fraud upon the United States depends upon the contract under which the Hanford Engineering Project is being constructed and the contract by which Olympic Commissary furnishes meals to the construction employees. The plaintiff called, in support of its contention, R. F. Ebbs, a Major in the United States Corps of Engineers who is executive officer of the Hanford Engineering Works. He testified that the construction work at Hanford was being performed by the E. I. du Pont de Nemours Company as prime contractor. His testimony was that that contract was secret by orders of the War Department through the office of Chief of Engineers. So secret is the contract that he was not permitted even to reveal the names of the individuals signing on behalf of the Government and du Pont. He testified that Olympic Commissary Company had a subcontract with du Pont and that this, also, was secret. He stated: "It is considered that the contracts cover a very important construction and operation job, and it would be detrimental to the country to reveal their contents." He testified that the originals of the contracts were in the office of the Comptroller General in Washington, D. C., and that, while he has not seen the contracts, he had seen copies of them. He stated that he was not an attorney but that he had a very competent legal staff at his command. He declined to reveal the length of the contracts. Having laid this foundation for the justification of refusal [6] to submit the contracts to the Court or the defendant, Major Ebbs then pro-

ceeded to testify orally concerning those provisions of the contract which were pertinent in this controversy. Plaintiff's case on the question of the relationship between Olympic Commissary and the Government and in support of its position that these counterfeit meal tickets were intended to defraud the Government was based exclusively upon this testimony as to the content of the contracts. The one exception was proof in the form of invoices for food which contained a stipulation that title passed to the United States upon delivery to the Olympic Commissary Company. If this defendant were charged with stealing food belonging to the Government, this invoice evidence would be sufficient. Standing alone, it is no proof that Olympic Commissary was a government agency or that defendant intended to defraud the Government. Unquestionably, Major Ebbs' oral testimony, if admissible, was sufficient to justify a conviction in this case. If such oral evidence was inadmissible, plaintiff has failed to make its case.

The right of the Army to refuse to disclose confidential information, the secrecy of which it deems necessary to national defense, is indisputable. *Firth Sterling Steel Company v. Bethlehem Steel Company*, 199 F. 353; *In re Grove*, 180 F. 62. The Army Regulation covering this is quoted in the footnote.¹ The determination of what steps are

¹Army Regulation 380-5 (5)—“Secret Material—a. Documents, information or material, the unauthorized disclosure of which would endanger national security, cause serious injury to the interests

necessary in time of war for the protection of national security lies exclusively with the military and is not subject to court review. *United States v. Hirabayashi*, 320 U.S. 81, 93. The war power embraces every phase of the national defense including the protection of war materials and the members of the armed forces from injury and from the dangers which attend the rise, progress and prosecution of war. *Prize Cases*, 2 Black 635, 671; *Miller v. United States*, 11 Wall 268, 303; *Stewart v. Kahn*, 11 Wall 493, 506; *McKinley v. United States*, 294 U.S. 397.

Implicit in a correct answer to the question as to the admissibility of this oral, secondary evidence is the understanding that the best evidence rule is a preferential rather than an exclusionary one. The rule requiring the production of documents is not a rule requiring evidence but a rule preferring the thing itself to any evidence about the thing. As Chief Justice Marshall said, in *Tayloe v. Riggs*, 26 U.S. 590, 595, "The rule of law is, that the best evidence must be given of which the nature of the thing is capable; that is, that no evidence shall be received which presupposes greater evidence behind in the party's possession or power." On this basis, the courts have recognized many situations under which so-called secondary evidence is admissible. Among these situations is the one where the original document accidentally has been lost or destroyed, *United States v. Pendell*, 185 U.S. 189; *Robertson*

or prestige of the Nation, or any Governmental activity thereof, or would be of great advantage to a foreign nation, shall be classified secret." [7]

v. Pickrell, 109 U.S. 608; *United States v. Sutter*, 21 How. 329; where it has voluntarily been destroyed in the course of business or by mistake, *Tayloe v. Riggs*, supra; *McDonald v. United States*, 89 F. (2d) 128; where it is suppressed by the opponent of the party offering it, *Morris v. Vanderen*, 1 Dallas, 64, 65; *Dunbar v. United States*, 156 U.S. 185; where it is detained by a third party who, by reason of privilege, is not compellable to produce it, *De Leon v. Territory, Arizona*, 80 Pac. 348; where it is in possession of a third person who, through collusion with the opponent, refused to produce it, *People v. Powell, California*, 236 Pac. 311; where it is a physical impossibility to remove the writing into court because the characters exist on something firmly fixed to the realty, *Harper v. State, Alabama*, 19 So. 857; where it is a part of an irremovable judicial or public record, *Ronkendorff v. Taylor*, 4 Peters 349, 360; *Cohn v. United States*, 258 F. 355; where the original consists of private books of public importance such as banks and title abstracts, *People v. Hurst*, 41 Mich. 328; *Crawford v. Branch Bank*, 8 Ala. 79. The rule requires the production of the best evidence of which the case admits and that when the evidence offered is clearly substitutory in its nature and the unavailability of the original raises no suspicion of [8] weakness in the substitute, the secondary evidence is admissible.²

²Of persuasive interest in considering this question is the proposed Rule 602 of the Model Code of Evidence promulgated by the American Law Institute.

The Supreme Court stated the rule in this language: "This rule of evidence must be so applied as to promote the ends of justice and guard against fraud or imposition. If the circumstances will justify a well-grounded belief that the original paper is kept back by design, no secondary evidence ought to be admitted; but when no such suspicion attaches and the paper is of that description that no doubt can arise as to the proof of its contents, there can be no danger in admitting the secondary evidence." *Renner v. The Bank of Columbia*, 22 U.S. 581, 596.

In view of the foregoing, I see no merit in defendant's general attack upon this recollection testimony. The admissibility of secondary evidence

Rule 602. Evidence as to Content of Writings; Best Evidence Rule.

As tending to prove the content of a writing, except an official record, no evidence other than the writing itself is admissible unless

- (a) evidence has been introduced sufficient to support a finding that the writing once existed and is not a writing produced at the trial, and the judge finds that, assuming that the writing once existed and is not a writing produced at the trial,
 - (i) it is now unavailable for some reason other than the culpable negligence or wrongdoing of the proponent of the evidence, or
 - (ii) it would be unfair or inexpedient to require the proponent to produce the writing; * * "

The committee's comment on this Rule was: "This Rule imposes the principle of the so-called best evidence rule which as generally stated makes secondary evidence of the content of the writing inadmissible unless failure to offer the original is satisfactorily explained." [9]

under proper circumstances, in criminal as well as civil cases, has long been recognized. *United States v. Gooding*, 25 U.S. 460, 467. It is *true* that in offering the secondary evidence, plaintiff urges me to tread an unbeaten path. I see no insuperable obstacle to traversing that path. The exigencies of war require the withholding of the original document. Its unavailability is due to no fault or design upon plaintiff's part. The ends of justice will be served rather than thwarted by enabling the Government, in cases involving contracts situated as is this, to prove the pertinent portions of their content by secondary means.

However, the plaintiff here has failed to meet the requirements preliminary to the reception of such evidence. While it is not prevented from presenting such evidence when it seeks so to do, it must present the best evidence available to it. "The principle established by this Court as to secondary evidence in cases like this is, that it must be the best the party has in its power to produce. The rule is to be so applied as to promote the ends of justice and guard against fraud, surprise and imposition." *Cornett v. Williams*, 87 U.S. 266, 246. Major Ebbs testified he had never seen the original contract. His recollection was based upon a view of a copy of the contract. It is universally recognized that, in situations such as this, a copy of the copy will not suffice. The circumstances under which that rule applies were delineated by Mr. Justice Storey in *Winn v. Patterson*, 34 U.S. 662, 676, as follows: "We admit that the rule that a copy of a

copy is not admissible evidence is correct in itself when properly understood and limited to its true sense. The rule properly applies to cases where the copy is taken from a copy, the original being still in existence and capable of being compared with it; for then it is a second remove from the original; or where it is a copy of a copy of a record, the record being in existence, by law deemed as high evidence as the original; for then it is also a second remove from the record." The testimony here shows that the original is in existence in the [10] General Accounting Office. If Major Ebbs, when he checked the copy, had caused a copy of it to be made, that second copy clearly would be inadmissible. Since he could not introduce a copy of the copy, it is clear that he cannot testify as to his recollection of the copy. This follows from the fact that "the fundamental notion of the rule requiring production is that in writings the smallest variations in words may be of importance, and that such errors in regard to words and phrases are more likely to occur than errors in regard to other features of a physical thing." Wigmore on Evidence, 3d ed., sec. 1242. No showing was made that the plaintiff could not produce a witness who had seen the original. No sufficient showing can be made that would justify on security grounds, the withholding of a view of the original from Major Ebbs or some other equally reliable Army officer. If the copy which Major Ebbs viewed was a true copy, no harm can come from the exhibition to him of the original. Of less importance, but worthy of

consideration, is the fact that Major Ebbs is not a lawyer. In view of the immensity of the project, it seems fair to assume that the Army-du Pont contract is lengthy and, perhaps complicated. By the very nature of things, the Court is not permitted to know whether that assumption is correct. Therefore, it seems not unreasonable to me to require that such secondary evidence be supplied by one trained in the art of drawing and construing contracts.

Since the plaintiff has failed to present the best evidence available to it, I am forced to conclude that I should have sustained the objection to the introduction of such testimony. That being true, it is my duty now to disregard it. Without such evidence, plaintiff has failed to sustain its burden that the Olympic Commissary was an agency of the United States and that the counterfeiting of its meal tickets was calculated to defraud the United States.

Therefore, the action must be dismissed.

December 22, 1944.

L. B. SCHWELLENBACH

United States District Judge

[Endorsed]: Filed December 22, 1944. A. A. LaFramboise, Clerk. [11]

[Title of Court and Cause.]

MOTION TO REOPEN TRIAL IN COMPLI-
ANCE WITH COURT'S MEMORANDUM
DECISION

Comes now the plaintiff by Edward M. Connelly, United States Attorney, and Harvey Erickson, Assistant United States Attorney, and respectfully moves the Court to make an order reopening the trial of the above-entitled proceeding which was tried to the Court without a jury, and which is still pending before the Court, in order that plaintiff may meet the requirements of the Court's Memorandum Decision with reference to the testimony of Major R. F. Ebbs relative to his knowledge of the prime contract existing between the United States of America and the E. I. duPont de Nemours and Company, relating to the establishment of the defense industrial project at Hanford, Washington.

Plaintiff further respectfully shows to the Court that the matter of securing a member of the Judge Advocate General's Department of the United States Army Engineers, who is familiar with the original prime contract referred to herein and in the Court's Memorandum Decision, and bringing such officer to Yakima as a witness is a comparatively simple matter; that the ends of justice would best be served, as the present lack of "best evidence" as pointed out in the Court's Memorandum Decision, may be supplied in the manner requested herein.

That counsel and the Court in the trial of the above-entitled proceeding were treading upon a comparatively strange field of evidence. That the plaintiff and its attorneys tried the case on a theory of evidence wholly distinct from that upon which the Court predicates its Memorandum Decision.

That the plaintiff's theory was that the United States of America was the owner of the food being dispensed through the Olympic Commissary Company, and which the defendant was charged with seeking to wrongfully divert through the use of counterfeit meal tickets. The Government's proof was confined largely to evidence of ownership of the merchandise used in the preparation of meals by the Olympic Commissary Company which was shown by documentary evidence consisting of the purchase order forms required by the Government and the E. I. duPont deNemours [12] Company, and its subcontractors, including Olympic Commissary Company, in the purchase of merchandise to be converted into meals and food for service upon the Hanford Project, which said purchase orders specifically recited:

"The material to be furnished hereunder is for the benefit of the United States Government and title thereto will pass to the United States Government upon delivery, subject to subsequent inspection and acceptance of the material; if specifications are not met, material may be returned at seller's expense."

That other proof offered by plaintiff in support

of its effort to prove ownership in the United States of America of the food and merchandise converted into meals and sold by the Olympic Commissary Company consisted of certified copies of the various authorities issued by the Secretary of War, and progressing through various stages down to the engineer in charge of the construction of the Hanford Project, to-wit, the witness, Major R. F. Ebbs; that such certified copies of authority designated the powers which Major Ebbs had to purchase, possess and own in the name of the United States, personal property to be used in the construction of the Hanford Project. Other documentary proof and oral evidence in support thereof clearly designated that the United States of America paid for every single item of personal property, merchandise, food and labor in the preparation of meals which were served upon the Hanford Engineer Works Project, and that the E. I. duPont deNemours and Company and its subcontractor, the Olympic Commissary Company, acted only as a disbrusing agent for the United States of America in this connection.

As recited, the case was tried upon this theory because of the confidential character of the prime contract. The Court's opinion indicates that this theory was incorrect, and that the evidence in support thereof was not sufficient to show ownership of food in the United States for the reason that Major Ebbs' evidence with reference to the prime contract, without question, referred to a copy which he had in his possession in connection with his

duties as Army Engineer in charge of the Hanford Engineer Works. In fact, under cross-examination, at page 24, Major Ebbs indicated very clearly that the copy of the prime contract, which he had in his possession, was authenticated by competent authority and was under his jurisdiction. Presumably, it is the copy of the contract under [13] which the entire project at Hanford Engineer Works is conducted. At page 25 of the cross-examination of the Major, he stated that he had seen the contract between the Olympic Commissary Company and E. I. duPont deNemours and Company, and that he had jurisdiction over a copy of it.

For the foregoing reasons it is respectfully requested that the Court reopen this case for the purpose of permitting the Government to call as a witness a member of the Judge Advocate General's Department of the United States Army Engineers who has personally seen the original contract referred to in Major Ebbs' testimony, and who may testify as a legal expert to its contents.

It may further be observed that the defendant will not be prejudiced by this procedure, that the case is still open and the defendant has been on bail since a few days after his arrest.

Respectfully submitted,

EDWARD M. CONNELLY

United States Attorney

HARVEY ERICKSON

Assistant United States
Attorney

[Endorsed]: Filed December 27, 1944.

[Title of Court and Cause.]

ORDER PERMITTING REOPENING

This matter coming on before the above-entitled Court for consideration on this 13th day of February, 1945, and it appearing to the Court that after the filing of the Court's opinion on December 22, 1944, the United States made a motion to reopen the trial in compliance with the Court's Memorandum Decision, that said motion was supported by a memorandum of authorities which was served upon Ole Sandvig, Attorney for the defendant, on January 20, 1945, and it appearing to the satisfaction of the Court that defendant's counsel was ordered to furnish the Court with a memorandum of authorities against plaintiff's motion to reopen the trial on or before February 5, 1945, and it appearing to the satisfaction of the Court that defendant's counsel has failed to furnish the Court with any memorandum of authorities pursuant to Rule 4, Paragraph C-3, [14] of the Civil Rules of the United States District Court for the Eastern District of Washington,

It Is Therefore by the Court Ordered and Decreed that plaintiff's motion to reopen the trial in compliance with the Courts' Memorandum Decision be granted and the plaintiff is permitted to reopen said case to supply the deficiency in proof mentioned in the Court's opinion of December 22, 1944, provided further that the defendant shall have all rights accorded him by law in connection with the reopening of the case by the plaintiff.

Dated this 13th day of February, 1945.

L. B. SCHWELLENBACH

United States District Judge

[Endorsed]: Filed February 13, 1945 [15]

(Excerpt from Yakima Minutes, Journal 5,
Page 217)

April 11, 1945

Court Convened Pursuant to Adjournment,
at 10 A. M.

Present: Honorable Lewis B. Schwellenbach, District Judge, A. A. LaFramboise, Clerk, Edward M. Connelly, U. S. Attorney, Harvey Erickson Assistant U. S. Attorney, Ralph R. Isaacs, Deputy U. S. Marshal.

PROCEEDINGS

[Title of Cause.]

Case called for further testimony, both parties ready.

After the first witness was sworn, Mr. Sandvig objected to the introduction of testimony. Objection overruled.

The following witnesses were sworn and testified on behalf of the Plaintiff, Ralph G. Cornell, Morton K. Barrett.

Plaintiff rested at 11:15 A. M.

Defendant rested without offering any evidence.

After argument of counsel the Court found the Defendant Guilty on all counts.

Defendant's request for pre-sentence investigation granted. Passing of sentence continued to May 1, 1945 at 11:00 a. m. [81]

[Title of Court and Cause.]

ORDER OF TRANSFER

This matter coming on before the above-entitled Court upon application of the defendant in his own proper person,

It Is Hereby Ordered that the above-entitled cause be, and it hereby is, transferred from Yakima in the Southern Division of the Eastern District of Washington, to Spokane in the Northern Division of said District for all proceedings herein.

It Is Further Ordered that the defendant shall report to the United States District Court at Spokane, Washington for sentence and further proceedings herein on May 7, 1945 at the hour of 10:00 A. M., or such other time that may be ordered by Judge Schwellenbach.

Dated this 1st day of May, 1945.

JOHN C. BOWEN

United States District Judge

Presented By:

EDWARD M. CONNELLY

United States Attorney

Approved:

O. SANDVIG

Atty for Deft.

[Endorsed]: Filed, May 1, 1945.

[Title of Court and Cause.]

JUDGMENT AND COMMITMENT

On this 7th day of May, 1945, came the United States Attorney, and the defendant Richard Roland Haugen appearing in proper person, and having waived the presence of his attorney and,

The defendant having been convicted on the judgment of the Court of the offenses charged in the Indictment in the above-entitled cause, to wit: making, forging, counterfeiting, uttering, publishing and possession of obligations of the United States and other writings and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing [82] to the Court, It Is by the Court Adjudged that defendant is guilty as charged in the Indictment, and it is further

Ordered and Adjudged that the defendant, hav-

ing been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of One Year and One Day on Count 1, One Year and One Day on Count 2, One Year and One Day on Count 3, of the Indictment, said imprisonment sentences to run concurrently,

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) L. B. SCHWELLENBACH

United States District Judge.

[Endorsed]: Filed, May 7, 1945.

[Title of Court and Cause.]

NOTICE OF APPEAL

Name and address of appellant: Richard Roland Haugen, Box 32, Hot Springs, Montana.

Name and address of appellant's attorneys: Robertson & Smith, Spokane & Eastern Building, Spokane 8, Washington

Offense: Violation of Sections 72 and 73, Title 18 U.S.C.A.; making, forging, counterfeiting, uttering, publishing, and possessing of obligations of the United States and other writings.

Date of judgment: May 7, 1945.

Brief description of judgment or sentence: One

year and one day on Count I; one year and one day on Count II; one year and one day on Count III of the indictment; said imprisonment sentences to run concurrently.

I, Richard Roland Haugen, the above-named appellant, hereby appeal [83] to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

RICHARD ROLAND HAUGEN
Appellant

Dated May 11, 1945.

Received copy of the foregoing notice of appeal, with grounds of appeal annexed, this 11th day of May, 1945.

EDWARD M. CONNELLY
United States District Attorney and Attorney for
Plaintiff

GROUND OF APPEAL:

1. Error of the Court in overruling defendant's plea of former jeopardy by reason of defendant's having been put upon trial for the same offense in case No. C-3929, entitled "United States of America, Plaintiff, vs. Richard Roland Haugen, Defendant, in the above entitled Court, in which case the Court sustained an oral demurrer to the indictment after the opening statement in behalf of the plaintiff.

2. Error of the Court in admitting over the objection of the appellant hearsay evidence as to

the contents of the contract between the United States of America and E. I. duPont deNemours & Company and the sub-contract between the duPont Company and Olympic Commissary Company.

3. Error of the Court in permitting the Government to introduce over objection oral secondary evidence as to the legal effect and contents of said contract, particularly between the duPont Company and Olympic Commissary Company, said sub-contract being the best evidence.

4. Error of the Court in failing to enter proposed order of dismissal with prejudice after the written opinion of the Court filed December 22, 1944, stating, "The action must be dismissed."

5. Error of the Court in entering the order permitting reopening, filed February 13, 1945.

6. Error of the Court in admitting in evidence additional hearsay testimony relating to the contract between the Government and the duPont Company after such reopening.

7. That there was a total failure of proof and no substantial evidence to prove beyond a reasonable doubt the intent of the defendant to defraud the United States or an agency thereof. [84]

8. That the verdict of the Court and judgment of conviction is contrary to law and the evidence.

The foregoing succinct statement of the grounds

of appeal will be amplified and added to in the assignments of error.

ROBERTSON & SMITH

By DEL CARY SMITH, Jr.

Attorneys for Richard

Roland Haugen

[Endorsed]: Filed, May 11, 1945

General Casualty Company of America

[Title of Cause.]

BAIL BOND PENDING DETERMINATION
OF APPEAL

Know All Men by These Presents: That we Richard R. Haugen, as Principal, and the General Casualty Co., a Corporation as surety, are held and firmly bound unto the United States of America, in the full and just sum of One Thousand (\$1000.00) Dollars, to be paid to the United States of America to which payment well and truly to be paid, we bind ourselves and heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 11th day of May in the year of our Lord One Thousand Nine Hundred and

Whereas, Lately at the April term of the District Court of the United States, for the Eastern District of Washington, Southern Division, in a suit pending in said court, between the United States of

America, plaintiff and Richard R. Haugen, defendant, a judgment and sentence was rendered against the said defendant Richard R. Haugen and the said Richard R. Haugen has appealed to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in the aforesaid suit.

Now, the condition of the above obligation is such that if the said Richard R. Haugen shall appear either in person or by attorney in the United States Circuit Court of appeals for the Ninth Circuit Court on such day or days as may be appointed for the hearing of said cause, in said Court, and shall prosecute his said appeal, and abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit in said cause, and shall surrender himself in the execution of the judgment and sentence appealed from, as said Court may direct, if the judgment and sentence against [85] him shall be affirmed, or the appeal is dismissed; and if he shall appear for trial in the District Court of the United States, for the Eastern District of Washington, Southern Division, such day or days as may be appointed for retrial by said District Court and abide by and obey all orders made by said Court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the

above obligation to be void; otherwise to remain in full force, virtue and effect.

[Seal]

GENERAL CASUALTY COM-
PANY OF AMERICA

By ANTONY PANELLA

Attorney-in-Fact

RICHARD R. HAUGEN,
Principal.

Bond approved as to Form:

EDWARD M. CONNELLY
United States District
Attorney

Bond Approved this 11th day of May, 1945.

L. B. SCHWELLENBACH,
Judge.

Address: Box No. 32 Hot Springs, Mont.

[Endorsed]: Filed, May 11, 1945

(Excerpt from Court Minutes at Spokane)
(Journal 16, page 823)

Saturday—May 12, 1945
In Chambers

[Title of Cause.]

HEARING IN RE RULE 7

Now on this 12th day of May, 1945, counsel were called before the Court under the provisions of Rule 7 of the Rules of Practice and Procedure after finding of guilt in criminal cases, Mr. Erick-

son appearing for the plaintiff, and Mr. Del Cary Smith appearing for the defendant.

June 18, 1945 fixed as the time for filing Bill of Exceptions and Assignments of Error and for Settling the Bill of Exceptions. [86]

[Title of Court and Cause.]

ORDER OF EXTENSION OF TIME FOR THE
SETTLEMENT AND FILING OF BILL
OF EXCEPTIONS, ASSIGNMENTS OF
ERROR, AND PRAECIPE

Upon the application of the defendant-appellant, Richard Roland Haugen, and upon his showing of good cause therefor, it is

Ordered that the time of the defendant-appellant, Richard Roland Haugen, within which to procure to be settled and to file his bill of exceptions herein, and in which to file his assignments of error and praecipe herein in connection with his aforesaid appeal be and it is hereby extended to and including the 18th day of June, 1945.

Dated this 5th day of June, 1944.

L. B. SCHWELLENBACH

United States District Judge

Approved June 2, 1945:

EDWARD M. CONNELLY

United States Attorney and

Attorney for Plaintiff

ROBERTSON & SMITH

By DEL CARY SMITH Jr.

Attorneys for Defendant.

[Endorsed]: Filed, June 5, 1945 [87]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the above-named Court:

Will you please prepare, duly certify, and send to the United States Circuit Court of Appeals for the Ninth Circuit a transcript of the record in the above-entitled case for use in the appeal of the defendant, Richard Roland Haugen, to the said Circuit Court of Appeals from the judgment entered in the above-entitled case, by including in said transcript the following items from the files and records of the above-entitled case in the District Court deemed necessary for a full and complete consideration of said appeal:

1. Indictment, filed August 11, 1944.
2. Arraignment and Plea, filed August 18, 1944.
3. Waiver of Jury Trial, filed October 5, 1944.

4. Opinion of the Court, filed December 22, 1944.

5. Motion to Reopen Trial in compliance with Court's Memorandum Decision, filed December 27, 1944.

6. Order Permitting Reopening, filed February 13, 1945.

7. Minutes of Hearing, Southern Division, April 11, 1945.

8. Order of Transfer, filed May 1, 1945.

9. Judgment and Sentence filed May 7, 1945.

10. Notice of Appeal (Grounds of Appeal annexed), filed May 11, 1945.

11. Bail Bond Pending Determination of Appeal.

12. Order of Extension of Time for the Settlement and Filing of Bill of Exceptions, Assignments of Error, and Praecipe, filed June 5, 1945.

13. Order Giving Directions for Preparation of Record on Appeal, entered May 12, 1945 (page 823, Journal 16).

14. All exhibits received in evidence.

15. Order Settling and Certifying Bill of Exceptions, filed June 18, 1945.

16. Assignments of Error, filed June 18, 1945.

17. Praecipe for Transcript of Record, filed June 18, 1945.

Said transcript of record to be prepared and filed in the United States Circuit Court of Appeals for the Ninth Circuit as required by law and [88] the Rules of said Circuit Court of Appeals.

Dated June 18, 1945.

Respectfully,

ROBERTSON & SMITH

By DEL CARY SMITH, Jr.

Attorneys for Defendant-

Appellant, Richard Roland
Haugen

Service of two copies of the appellant's Praecipe
is hereby acknowledged this 18th day of June, 1945.

EDWARD M. CONNELLY

United States Attorney

Attorney for the Appellee

The United States of
America

HARVEY ERICKSON

Asst. U. S. Attorney

[Endorsed]: Filed, June 18, 1945

[Title of Court and Cause.]

ORDER RESPECTING EXHIBITS

It being made to appear to the undersigned Judge
of the above-entitled Court that it is impossible to
reproduce certain exhibits in the above-entitled
cause, for the reason that the same are photographs
of which the negatives are not available,

Now, Therefore, the Clerk of the above-entitled
Court, in transmitting the record on appeal to the
Circuit Court of Appeals for the Ninth Circuit, is
hereby directed to transmit the original photo-
graphs, being Exhibits N, O & P.

Dated this 25th day of June, 1945.

L. B. SCHWELLENBACH

United States District Judge

Approved and notice waived:

EDWARD M. CONNELLY

United States District

Attorney and Attorney for
Plaintiff

[Endorsed]: Filed, June 25, 1945 [89]

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD

United States of America

Eastern District of Washington—ss.

I, A. A. LaFramboise, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing type-written pages numbered from 1 to 89 inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and all other proceedings in the above entitled cause as are necessary to the hearing of the appeal therein, in the United State Circuit Court of Appeals as called for by the appellant in his Praecipe for Transcript of Record, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the judgment and decree of the District Court of the United States for the Eastern District of Wash-

ington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California.

I further certify that I hereto attach and herewith transmit the original Assignments of Error, Certified Bill of Exceptions, and Original Exhibits "N", "O" and "P".

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of \$39.35, and that the said sum has been paid to me by Robertson & Smith, Attorneys for the Appellant.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Spokane in said District this 26th day of June, A. D. 1945.

[Seal]

A. A. LaFRAMBOISE,

Clerk

By EVA M. HARDIN

Deputy [90]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Comes now the defendant and appellant, Richard Roland Haugen, by his attorneys, Robertson & Smith, and states that in the proceedings herein and in the order and judgment entered herein there are manifest errors, and he assigns the following errors committed by the above-entitled Court in the above-entitled cause, to-wit:

ASSIGNMENT OF ERROR NO. 1

The District Court erred in overruling defendant's plea of former jeopardy by reason of defendant's having been put upon trial for the same offense in case No. C-3929, entitled "United States of America, Plaintiff, vs. Richard Roland Haugen, Defendant", in the above-entitled Court, in which case the Court sustained an oral demurrer to the indictment after the opening statement in behalf of the plaintiff.

ASSIGNMENT OF ERROR NO. 2

The District Court erred in admitting over the objection of defendant hearsay evidence as to the contents of the contract between the United States of America and E. I. duPont deNemours & Company and the subcontract between the duPont Company and Olympic Commissary Company, the contract being the best evidence, as follows:

"Q. First I wish to ask you some general

questions. Who is the company that is doing the construction work at Hanford?

Mr. Sandvig: If he knows of his own personal knowledge.

Mr. Erickson: He is in charge of the construction.

A. Am I to answer if I know it of my own personal knowledge or officially?

Mr. Sandvig: Of your own personal knowledge.

Q. If you know it officially.

Mr. Sandvig: No; of his own personal knowledge.

A. The E. I. duPont deNemours Company.

Q. The E. I. duPont deNemours Company is building the project at Hanford?

A. They are the prime contractor.

Q. By prime contractor you mean they have the contract with the United States government?

Mr. Sandvig: I object as not the best evidence. If there is a contract between the duPont company and the United States, the contract itself is the best evidence.

The Court: I am inclined to agree with you, but I will let him answer and allow an exception, and I may later strike out the answer. I don't know yet.

(Question read by reporter.)

A. Yes.

Q. Now the contract which the E. I. duPont

deNemours Company has with the United States, is that a public contract, or otherwise?

Mr. Sandvig: May it be understood, Your Honor, without bothering the Court all the time, that I am objecting to all of this?

The Court: It is all subject to your objection, and an exception is allowed.

A. The contract is a secret contract.

Q. By whose orders is it a secret contract?

A. By the War Department.

Q. And you have——

The Court: Wouldn't that be a thing which——

Mr. Sandvig: I am taking it for granted my objection goes to all of this.

The Court: The Secretary of War would issue some sort of an order, would he not?

Mr. Sandvig: Yes, sure.

The Court: That it would be secret?

Mr. Erickson: I will establish that, I think.

The Court: All right.

Mr. Sandvig: The order itself would be the best evidence. That is like me saying what the statute is.

The Court: Go ahead, Mr. Erickson.

Q. Did the War Department, or who in the War Department issued that order?

Mr. Sandvig: If you know of your own personal knowledge.

A. The order came to my commanding officer from the office of the Chief of Engineers.

Mr. Sandvig: I make the same objection.

The Court: It is all being admitted subject to your objection.

Mr. Sandvig: I am afraid I will slip up on something.

The Court: You are not going to slip up on anything. You have your objection. It does seem to me, Mr. Erickson, that the order making it secret is something that could be produced.

Q. (Mr. Erickson): Is that something that can be produced?

A. I am not sure it was not a verbal order.

Q. Whom did you receive instructions from that the contract was secret?

A. I received verbal instructions from the office of the Chief of Engineers.

Q. And who in that office?

Mr. Sandvig: Subject to my objection.

Q. From whom in that office did you receive the instructions?

A. I received instructions that individual's name was not to be brought into a public hearing.

The Court: What justification could there be for concealing from the public an order which says that the contract is to be secret? He says he has orders to keep secret who gave the order."

ASSIGNMENT OF ERROR NO. 3

The District Court erred in permitting the plaintiff to introduce over objection oral secondary evidence as to the legal effect and contents of said contract, particularly between the duPont Company and Olympic Commissary Company, said subcontract being the best evidence, as follows:

“A. The E. I. du Pont de Nemours Company have a cost-plus fixed-fee contract with the government.

Q. Explain so we can understand——

Mr. Sandvig: The contract itself is the best evidence.

The Court: Yes; this all goes in over your objection.”

ASSIGNMENT OF ERROR NO. 4

The District Court erred in overruling defendant's objection to the introduction of further testimony after the written opinion of the Court filed December 22, 1944, stating, “The action must be dismissed”, as follows:

“Q. Will you state your name, please?

Mr. Sandvig: At this time, if the Court please, I want to object to the introduction of any evidence in this case—any further evidence in the case—on the ground and for the reason that the defendant has already been dismissed from the charge predicated against him, and that he has been in former jeopardy.

I just want to make this observation at this time. Your Honor wrote an opinion of the Court. It was signed by Your Honor. You went into the facts. You make your conclusions at considerable length. I do not know of any particular form of findings of fact and conclusions of law or decree or judgment that are required, but you go into it at great length.

The Court: I say at the end that the action must be dismissed.

Mr. Sandvig: Yes. And I say it is dismissed.

The Court: I will overrule the objection. There was no order of dismissal entered, as I construe it."

ASSIGNMENT OF ERROR NO. 5

The District Court erred in entering the order permitting reopening, filed February 13, 1945.

ASSIGNMENT OF ERROR NO. 6

The District Court erred in admitting in evidence additional hearsay testimony relating to the contract between the United States of America and the duPont Company after such reopening, as follows:

"Q. Now directing your attention to the original contract between the United States Government and the E. I. duPont de Nemours Company, what provision is made in that contract about property used in the prosecution of the work on the Hanford Engineer Works?

Mr. Sandvig: I object to that as not being the best evidence. The witness has the contract before him. They have opened the doors now, and the contract is no doubt admissible. He has been using it for evidence, and certainly the contract is the best evidence. No matter how good a lawyer he may be, we might disagree on its interpretation. The contract itself is the best evidence.

The Court: The objection is overruled."

ASSIGNMENT OF ERROR NO. 7

There was a total failure of proof and no substantial evidence to prove the intent of the defendant to defraud the United States of America or any agency thereof.

ASSIGNMENT OF ERROR NO. 8

The verdict of the Court and judgment of conviction is contrary to the law and the evidence.

And by reason of said errors and other manifest errors appearing in the record herein, the defendant and appellant, Richard Roland Haugen, respectfully prays that the judgment of conviction herein be set aside, and that the indictment be fully and in all respects dismissed as to him, and that he be fully discharged herein, or, in the alternative, that he be granted a new trial.

Dated this 18th day of June, 1945.

ROBERTSON & SMITH

By DEL CARY SMITH

Attorneys for Defendant-Appellant, Richard Roland Haugen

Service of the foregoing assignments of error by defendant, Haugen, is hereby accepted and the receipt of a copy thereof is hereby acknowledged this 18th day of June, 1945.

EDWARD M. CONNELLY

United States Attorney, Counsel for Plaintiff-Appellee, United States of America

HARVEY ERICKSON

Asst. U. S. Atty.

[Endorsed]: Filed June 18, 1945.

In the District Court of the United States for
the Eastern District of Washington, Southern
Division

C-3929

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD ROLAND HAUGEN,

Defendant.

REPORTER'S TRANSCRIPT OF TESTIMONY

Be It Remembered that the above entitled and numbered cause came on for trial before the Honorable L. B. Schwellenbach, judge of the above entitled court, at the hour of 10:00 o'clock a.m., June 14, 1944, at the Federal Court House, in Yakima, Washington, the plaintiff appearing by Mr. Edward M. Connelly, United States Attorney for said District, and Mr. R. Max Etter, Assistant United States Attorney for said District, the defendant appearing in person and by his attorney, Mr. Ole Sandvig;

Whereupon the following proceedings were had, to-wit:

The Court: Are the parties ready in the case of United States vs. Richard Roland Haugen?

Mr. Sandvig: The defendant is ready.

Mr. Etter: The government is ready.

Mr. Connelly: We have stipulated that this case may be tried to the Court, without a jury, and the

defendant has personally waived his right to trial by jury.

The Court: Are you going to make an opening statement?

Mr. Etter: May it please the Court, the defendant is charged [1*] by indictment on three counts. The difference in the counts is the second and third counts charge the uttering and publishing with intent to defraud the United States, and the first count is a charge of possession of a number of false and fraudulent meal tickets, with the intent to defraud.

The Government intends to show by its testimony that just prior to the time of the commission of the crime charged in the indictment, the defendant, Richard Roland Haugen, went to a printer in Tacoma, a man named George F. Allen, to get these tickets printed. Prior to the time he had gone over there he was an employee of the Hanford Project, and he himself had purchased from the Olympic Commissary Company a so-called meal ticket.

The Government will show the meal ticket which was then on sale there, which was purchased by the defendant before he went to Tacoma, was a composite ticket; that on one side or one end of the composite ticket was an authorization which was signed by the employee purchasing the ticket, which authorized the deduction from his pay, in the event the ticket was purchased in that fashion, or on the other hand where cash was paid that authorization was unnecessary.

* Page numbering appearing at foot of page of original Reporter's Transcript.

We will show that Mr. Haugen purchased one of these tickets. He took the so-called perforated end of the [2] ticket when he went to the printer, Mr. Allen, of Tacoma, and had Mr. Allen print 1,000 of these tickets, in the same form as the one he had in his possession. Then he sold these tickets, as charged in the indictment, to Mr. McDonald, in one instance, and to this other individual, Mr. Holloway, in the other instance.

He had on his person when apprehended several of these tickets, and he had in his place of residence at Yakima a further number of tickets, in the total amount of 966, I believe it was, all of which were of the same type as the one which he handed the printer for printing, and all of which contained the same serial number.

These tickets were not printed the same as the type they used, and we will prove the falsity and fraudulent character of the tickets themselves, that they were spurious.

We intend to show through the introduction of much of our proof in the form of exhibits which are certified exhibits of the War Department, a delegation of authority from Col. Mathias, who is the Area Engineer in charge of the Hanford Project, to Major Ebbs, the executive officer in charge of the corps of engineers. The further proof will be the authority of the Secretary of War to contract and expend money and to procure military supplies for carrying on the business of the War Department. [3] We intend to show the delegation of authority granted to the Secretary of War, from the Secretary

of War to the Undersecretary of War, and from the Undersecretary of War to the Commanding General of Army Service Forces. The fact of the delegation of authority will then be shown to proceed from the Commanding General of Army Service Forces to the chiefs of the various technical services, and the proof will show the Army Engineers is such a technical service.

We will show the designations of contracting officers by a designation or delegation of authority granting to certain officers the authority to approve contracts and to certify vouchers for payment of the same. That authority was in Major Ebbs by reason of delegation of authority down through the chain of authority originating with the Secretary of War, the immediate delegation of authority being from the Area Engineer, Col. Mathias, to Major Ebbs, in charge of the project.

We intend to further show the creation of the Manhattan Engineering District, having charge of the particular development and work on the Hanford Project.

The exhibits will also show the army orders which have designated the District Engineer, and the transfer order to the Area at Pasco.

We intend to show through the testimony of Major Ebbs, [4] the executive officer, what his particular duties are, and he will specify the jurisdiction and all matters on the project which come under his jurisdiction, by virtue of the delegation of authority contained in the proof I have just mentioned.

We will show the procedure of purchasing merchandise by which the regulations require the approval of the Area Engineer, or Major Ebbs, through the delegation of authority, of all purchases made on the Hanford Project. That approval is required on any purchase over the sum of \$2,000.00 before purchase, and the approval of purchases under \$2,000.00 is in the form of a confirmation or ratification; that those purchases of under \$2,000.00 may be purchased by the contractor under the contract, subject to ratification or confirmation by Major Ebbs.

We intend to show the connection and the interest of the Government in this particular case. We will present to the court the purchase order being used by the Olympic Commissary Company, upon which appear the conditions of the purchase order on the reverse side, and which are referred to on the front side of the purchase order, which by its terms vests all title in the United States of all merchandise purchases made by the Olympic Commissary Company, upon confirmation or ratification. We will show the procedure that is engaged in in the payment by the [5] United States for these purchases. We will show that the invoice of the Olympic Commissary Company, along with the purchase order, is presented to the DuPont Company, which makes payment on the amount and the items of purchase which have been made.

We will then show that the DuPont Company presents to the United States and to the Department over which Major Ebbs has jurisdiction, by his

delegation of authority, a total sheet in the form of a voucher, upon which appears the items and expenditures for which reimbursement is sought. There are different forms which are presented, which include the original order, the certificate of inspection, the voucher itself, and the copy, I believe, of the purchase order. This, we will show, is approved by Major Ebbs. His department is the sole department, and he is the sole officer who certifies these vouchers by virtue of his delegation of authority to the Army Finance Officer, who makes payment of these items from these funds which are appropriated by Congress, and which have been assigned for the purpose of the construction of the Hanford Engineer Project.

We will show further the system used in the so-called meal ticket plan. There are several types of meal tickets used. The only one which is material in this case is that plan which I have partly described in my opening statement, [6] having reference to the so-called section ticket which had a perforated side. Those are purchased in one of two ways, by deduction from pay-roll, which is a book transaction by du Pont, or it can be by outright purchase through the Olympic Commissary Company, by the individual purchasing the ticket.

We will show that money is credited immediately to the fund which is used in the expenditures for merchandise, equipment and wages on the Hanford Project, and that is credited to the fund maintained in a special account. In that account are funds of the United States and of no other person.

We will show through what we believe to be competent testimony that no money is furnished for any expenditure or any purchase or for any payroll by the du Pont Company on the Hanford Engineer Project, and that all funds used in the special account are funds of the United States expended by virtue of the purchase of merchandise on behalf of du Pont, but paid from special funds of the Government maintained for the credit of the du Pont Company.

The further proof will show through an employee of the Olympic Commissary Company, who will produce the other section of the ticket which was signed authorizing withdrawal of wages from the defendant Haugen, and will [7] show that that is kept and retained and has been retained in the records there on the project, and we will show that the other half of the ticket to which I have referred, the perforated part, was used by Haugen when he had the tickets printed in Tacoma.

We will show that these tickets were sold by the defendant to these two individuals named, Mr. Hollaway, in one instance, who received several tickets, and Mr. McDonald, and they will be brought here and will identify the tickets they purchased.

We will show furthermore, through the testimony of the supervisory checker of one of the messhalls the spurious ticket had come to and gone through the messhall, and this ticket was received by the lady, and later turned over to the du Pont Company and the Government.

The Government will show all equipment and all food in the Olympic Commissary Company is purchased by the Government funds and is the property of the Government.

We will show therefore the use of a spurious ticket is a fraud upon the Government, because of the fact there is no payment made to the Government, and it is a gratuity sought by the party passing this ticket for merchandise to which the Government has title, and for which the Government is not paid by the individual using the spurious ticket.

The Government will show the price at which these [8] tickets were sold. We will further show on the matter of notice to the defendant in respect to the ownership of the property, and with respect to the title to the Merchandise, that since and a long time prior to the time that these incidents occurred which resulted in the charge in this indictment, signs have been posted of various kinds and descriptions, some of which probably would not be material, as notice taken alone, but which in conjunction with the signs we claim would be sufficient notice of ownership of the property in the commissary building.

We will show by pictures the types of signs placed about the commissary, in which the statement is made that all food and equipment used in the building are the property of the Government, and any taking away of property would be prosecuted.

We will show further that these signs, in conjunction with that, appear at places all the way through the project, at the entrance within the project, and in conjunction with the mess halls,

which say "This is a Federal project, and the property thereon is the property of the Government," as a matter of notice to the defendant, and we will show at the time he purchased this meal ticket he knew the procedure involved, and knew how the meal tickets were purchased, from the fact of his own experience [9] at the project, and from these signs, and his intention was at the time to defraud the Government by the use of these tickets, and he actually perpetrated the fraud in the sale of these tickets to the individuals named.

I think that in general covers the proof the Government will use in substantiation of the charges in the indictment.

There was a statement made after arrignment by the defendant Haugen, in which he admitted the facts of the printing and sale of the tickets I have stated.

Mr. Sandvig: The defendant moves for an order of dismissal upon the opening statement of counsel for the Government, and for the further and additional reason that the indictment or any counts thereof do not state facts sufficient to constitute a crime.

Before I go into analyzing the indictment, counsel for the Government made what was to me a very significant statement. He said that the meal tickets allegedly held by the defendant were materially different, one had an edging and the other did not. We are charged with forging.

Is it wrong for me to go out and have tickets printed like these are as described in the indict-

ment? There is no allegation in the indictment, according to counsel's statement, that this is a true copy of the ones they used. It is different. It is materially different. They caught it, and counsel described it. [10]

The Court: How is it different? I have tried these fifty-cent and dollar counterfeitting cases, and they bring it in here and it looks impossible that anybody would take it. They are phoney on the face of them.

Mr. Sandvig: If they are so phoney—I have often thought of that; but we are not charged with counterfeitting.

The Court: Yes; it says you falsely made and counterfeitted.

Mr. Sandvig: Yes. I was mistaken about that. That is correct. But I don't know of any reason why I could not have these printed. There is no fraud in that. I can print all of them I want. I could have had a printer print a lot of them for me.

The Court: But they charge you with printing them with the intent of uttering them.

Mr. Sandvig: Yes. Take Count 1. "That Richard Roland Haugen heretofore, to-wit, on or about the 19th day of April, 1944, at Hanford in the county of Benton in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this court, then and there being, did knowingly, wilfully, unlawfully and feloniously, knowing the same to be false, falsely made and counterfeitted, have in his possession with intent to utter and publish as true 966 false, fraudulent and

counterfeit meal tickets in words and figures as follows: 'Olympic Commissary Company, men's meal ticket, good only at Mess Hall No. 7, [11] \$12.60, plus tax.' Blank name, blank badge, blank date. 'All for the purpose of defrauding the United States.'"

I want to call attention to what he is charged with counterfeiting or fraudulently passing "Olympic Commissary Company, men's meal ticket," and so forth.

Now let us go to Count 2. "That Richard Roland Haugen heretofore, to-wit, on or about the 19th day of April, 1944, at Hanford, in the county of Benton, in the Southern Division of the Eastern District of Washington, and within the jurisdiction of this court, then and there being, did knowingly, wilfull, unlawfully and feloniously, knowing the same to be false, falsely made and counterfeitted, publish and utter as true to one J. L. Halloway, six false, fraudulent and counterfeit meal tickets in words and figures as follows: 'Olympic Commissary Company, men's meal ticket, good only at Mess Hall No. 7, \$12.60, plus tax'" and then blank name, blank badge and blank date "All for the purpose of defrauding the United States."

Under Sections 72 and 73 of Title 18, it is hard for me to determine which count that they prefer to have under Section 72 and which under 73.

The Court: Read those two sections right now, will you?

Mr. Sandvig: I will read 73 first. (reading same)

The Court: Have you read the opinion from the Ninth Circuit in the Johnson case? [12]

Mr. Sandvig: Yes. I will get to that. I haven't read it recently. I read it sometime ago.

They are charging us with forging and uttering and counterfeitting this for the purpose of receiving a sum of money to defraud the United States.

Is there anything about that that we can obtain any sum of money from the United States? It is not a claim on the United States; it is not an order upon the United States. By no stretch of the imagination can he obtain a cent of money from the United States. It cannot be under Section 73. They don't even allege that. They don't allege in the indictment these were counterfeitted or forged for the purpose of obtaining a sum of money from the United States.

I think I will read this, and then I will come to Section 72. It is true this is an early case—88th Federal Reports, at page 253, Staton vs. United States. I will not read too many cases to Your Honor, and for that reason I am going to read this one with some care. (Reading said case, followed by law argument.)

Now I will read Section 72. (Reading same.) We would have to have the contract between the Olympic Commissary Company and the du Pont Company here before us, and then in order to make the chain we must have the contract between du Pont and the Government. [13]

The Court: I think I understand your position. I don't want to shut you off.

Mr. Sandvig: Maybe I can answer them.

The Court: I will hear from you on the matter of this pleading, whether your indictment is sufficient.

Mr. Etter: The indictment, Your Honor, is drawn under the general rule, in the language of the statute; the first count being possession with intent to defraud, and the other two counts being the acts themselves.

I want to read a section from the Prussian case, in the 282d U.S. Reports, at page 675 (reading from said case).

The Court: His objection is can you allege the counterfeiting of a piece of paper or a meal ticket. Let us suppose the Commercial Hotel of Yakima issued meal tickets, and you allege the defendant counterfitted the meal tickets of the Commercial Hotel of Yakima for the purpose of defrauding the United States, would that be a sufficient indictment, without alleging the connection between the Commercial Hotel of Yakima and the United States?

Mr. Etter: That goes to the matter of proof rather than the sufficiency of the indictment. Counsel contends, as I understand, that the defendant himself must know as a matter of fact the relation that exists between some particular organization, such as the Olympic Commissary Com- [14] pany and the United States, where he has falsely made and counterfeitted these tickets, but he is charged with notice of that fact.

The substantial thing to me is this, that the defendant is charged with an attempt to defraud the Government by the use of these meal tickets. The question of proof of his knowledge of the fraud is one thing apart from the proof which the Government intends to offer to show the matter of his relationship to the Olympic Commissary Company. Our proof will show as far as the defendant is concerned that he should have known, or did know, by virtue of notice, the ownership and title, regardless of whether it was the Olympic Commissary Company or the Commercial Hotel. The proof will show——

The Court: I am not interested in your proof; it is a question of pleading. Is this a sufficient pleading to bring this defendant into court?

Suppose you charged him with counterfeiting a bus line ticket, or the ticket of the Yakima streetcar system, and you say it was with intent to defraud the United States. There is nothing in this Olympic Commissary Company meal ticket that shows it had any connection with the United States.

Mr. Etter: No, but the statute itself says “any writing.” The Government charges that his purpose, regardless of what [15] company it was, or what particular act he may have performed, was for that purpose, and I think it is sufficient to charge him with doing this particular thing with intent to defraud the United States. Whether it was an Olympic Commissary Company meal ticket or some other writing, that his purpose was to defraud the United States. We charge that in the indictment, that he did this particular thing for

that particular purpose. I think we have to show the relation. That is a matter of proof.

The Court: But you are getting into the question of proof. Can you prove it. He has a right to have an indictment he can defend against, and can you charge him with doing something which apparently does not have any connection with the United States, and by simply adding on the words "for the purpose of defrauding the United States", put him on his defense? Are there not some cases on that question?

Mr. Etter: The Court mentioned the Johnson vs. Warden case.

The Court: That goes to the substance of the matter, the meaning of the words "other writing". Could you not charge anybody with doing anything in the world and then say "with intent to defraud the United States", and let him figure out how it was connected up with the United States?

If I cash a check at the Yakima Hotel and did not have any money in the bank, can you charge me with that [16] and then add the words "with intent to defraud the United States"?

Mr. Etter: This case of Johnson vs. Warden was a case where there was a forged physician's prescription. He forged the physician's prescription for narcotics, and they make this statement:

"We entertain no doubt that a forged physician's prescription for narcotics falls within the meaning of the phrase 'other writing' as used in that statute. It was said in *Prussian vs. United States*, 282 U.S., 675, that the words 'other writing' as used in a com-

panion statute, Section 29 of the Criminal Code, 18 U.S.C.A., Section 73, were included for the purpose of extending the penal provisions of the statute to all writings of every class if forged for the purpose of defrauding the United States."

The Court: That is not the question.

Mr. Etter: I think the indictment is sufficient.

Mr. Connelly: The indictment is in the language of the statute.

The Court: That is true, and the ordinary rule is if it is in the language of the statute it is sufficient, but here you have the extension of the statute into unlimited fields. If it was an obligation of the United States, a bond or anything like that, it would be all right, but it says "any other writing", and the Circuit Court of [17] Appeals says that that means any other writing. But when you extend the statute to the limits they have extended this statute, can you do it without some specific allegation?

Suppose you charge me with forging a check and passing it on the Yakima Hotel with intent to defraud the United States, how could I defend against that charge? How could I know what the relationship was between the Yakima Hotel and the United States Government?

Mr. Etter: You would not know the relationship, but the same thing might be true of forging a prescription. They would say "How did I know that had anything to do with the United States?" I think that argument was made in this writ for habeas corpus by Johnson.

The Court: I will read the Johnson case.

Mr. Etter: There are some other cases cited here, Prussian vs. United States.

The Court: I will take a few minutes recess.

(After a short recess the trial was resumed as follows:)

The Court: I am going to deny the motion and allow an exception, but I am denying it with this statement, that I intend to consider this question before I decide the case, and I consider it a serious question. There just isn't time right now. I haven't the facilities here to properly decide it. [18]

In the case of Meldrum vs. United States, 151 Federal 177, which is a case cited by the Ninth Circuit, a similar question was posed, and Judge Gilbert quoted from United States vs. Lawrence. This is Federal Case No. 15,572. This language is used:

“It is not necessary in an indictment for forgery to set out such a state of things existing in fact that the writing if genuine would necessarily or probably affect a right of the United States. When the writings appear, by their language, to be such that they might have the effect to defraud the United States, it is sufficient to set them out averring generally the intent to defraud the United States, but omitting all extrinsic circumstances.”

The language is used: “When the writings appear, by their language, to be such that they might have the effect to defraud the United States, it is sufficient to set them out, averring generally the intent to defraud the United States.”

The language here does not appear to be such that it might have the effect to defraud the United States. I have serious doubts about this question, but I will deny the motion and allow an exception. You may proceed with your testimony.

Mr. Etter: Your Honor, we request, if possible, that we be granted a short recess to confer on this matter. Your [18-a] Honor has some doubts in your mind about the further procedure in this matter. If the Court will grant us a few minutes recess.

The Court: Can we start at one o'clock?

Mr. Etter: Yes.

The Court: Is that all right, Mr. Sandvig?

Mr. Sandvig: Yes.

(Whereupon a recess was had to the hour of 1:00 o'clock p.m., of June 14, 1944, at which time, all parties being present as heretofore, the trial was resumed as follows:)

Mr. Connelly: If Your Honor please, in this case of United States vs. Haugen, it is true that we did give some consideration to the manner of the pleading. I know Mr. Etter waited for me one evening when we were trying the Fuel Dealers case, to discuss it with me.

As Your Honor knows, we are confronted with the difficulty that these contracts which would establish the relation between the Olympic Commissary Company and the Army, the prime contract and the secondary contract, are not available, for a very good reason. They are of a confidential character,

and having to do with a very important defense project.

During the noon hour I have read cases, one being United States vs. Tynan, in which similar language was used—that case is in the 6th Federal Second—with refer- [19] ence to forged doctors' prescriptions for intoxicating liquor. That case points out the very thought Your Honor pointed out in Judge Gilbert's decision.

I read the very recent case of Mullins vs. United States, in 51 Federal Supplement, where forged or counterfeit gasoline ration tickets were used, but again the distinction was pointed out that the gasoline coupons were thing required by law—the originals were—and the very fact that they were forged the court held the allegation that they were used in an attempt to defraud the United States was sufficient, because the original tickets were required by regulation and by law.

I am convinced in my own mind, if Your Honor please, that the oral demurrer to the indictment is very probably well taken. I believe Your Honor would be so convinced at the conclusion of any further study Your Honor would give it, and I am also convinced, particularly in view of additional evidence we have, setting up the system of paying the Olympic Commissary Company from Army funds, and the documentary proof we have in that respect, independently of contracts, we can sustain the charge, and we can prove the charge in that connection, and that we can safely plead in some manner that the Olympic Commissary Company is an

agency, with functions for the purpose of financing the men employed on this government project, and that is [20] paid by the Government in toto, for all of the meals and all of the food used, and all the expenses they are put to in feeding the men engaged on this project, and for that reason I would like to suggest that counsel have his client withdraw his plea, if he will, and let his verbal demurrer stand, and consent to it, and let an order be entered, and in that connection I would also like to move for a substantial reduction in this defendant's bond, to put it within his reach, so he would not have to remain in jail until another grand jury could return another indictment in different form.

Mr. Sandvig: I appreciate the difficulties counsel has, and in walking down the street awhile ago I told him I did not know how I could draw an indictment that would be good. I appreciate that difficulty.

Of course, my motion was made after the opening statement of counsel, and I moved for a dismissal both upon the opening statement of counsel, and upon the indictment. There might be a question. As a matter of fact, we have talked some here about former jeopardy I am inclined to think we would plead former jeopardy after the opening statement of counsel. That is not free from doubt. I frankly state that.

If the Court rules that it might be submitted again to the grand jury, here is the situation. I have never [21] known my client until I got in this case. From what I understand he was born here in the

state of Washington over on the Coast. He has lived here all his life. He lived in Bellingham for some time and in Auburn. He put in three years at the Bellingham Normal School, and these high wages came up and he went to work at Hanford. I talked with him in the presence of Mr. Connelly. I think Mr. Connelly will agree there is no use in the defendant getting away on this thing. He will not run away, and of course the only purpose of a bond is to assure his appearance. I think the Court would be justified in letting him out on his own recognizance. If he could get in touch with his folks—the trouble is this. They are a wonderful family, as I believe. They haven't a great deal of money, but my client will not even let his folks know he is in this difficulty. He will not write to them, or anything else. He writes to them, but not through the county jail. He will not tell them he is in trouble. So I think it would be former jeopardy.

Mr. Connelly: If the indictment is invalid, I cannot agree with you.

The Court: On this point I want to make it clear that I am not granting any motion to dismiss on the basis of the opening statement. The opening statement is not a matter I am considering at all. It is purely the indictment. [22]

Mr. Connelly: That is what I understood. That is all I would be consenting to on behalf of the Government.

Mr. Sandvig: I think this case should be a state case.

Mr. Connelly: Maybe it will be, but I haven't any intention of discussing that now.

Mr. Etter: I think it should be treated——

Mr. Sandvig: The Court indicated he is predicated on my motion——

The Court: I am considering the demurrer to the indictment, and only that.

Mr. Etter: I think the record should show the defendant entered a plea of not guilty without presenting a demurrer.

Mr. Connelly: There is no written demurrer served or filed.

The Court: I cannot pass upon the question of former jeopardy at this time.

Mr. Sandvig: No. That cannot be passed on now.

Mr. Connelly: It is on the question of the sufficiency of the indictment.

The Court: Let the record show that the defendant, through his counsel, orally demurred to the indictment, on the grounds that it did not state facts sufficient to constitute a crime, and that the demurrer has been sustained.

Mr. Sandvig: Then he should go out. He should be free until you get a new indictment.

Mr. Connelly: We will file another complaint in the Commissioner's Court in a few minutes. I haven't one ready. [23]

Mr. Sandvig: Then let him go on his own recognizance.

The Court: How much is the bail?

Mr. Connelly: It is \$1,500.00.

The Court: Tell the Commissioner \$500.00 will be sufficient and I will withhold signing any judgment of dismissal until after you have had an opportunity to file a complaint.

Mr. Sandvig: Can't you cut it down lower? I think he should go on his own recognizance.

The Court: No, no. There is nothing that has been said so far that is in any way indicative to me the defendant, your client, should go out without putting up a bond.

Mr. Sandvig: Five hundred dollars.

The Court: Tell the Commissioner it will be \$500.00, and I will take a recess until such time as you are ready to present something further.

Mr. Sandvig: I reserve the right to raise the question of former jeopardy.

The Court: Yes; you can raise that question at the proper time. [24]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF TESTIMONY

Be It Remembered that the above entitled and numbered cause came on regularly for trial before the Honorable L. B. Schwellenbach, Judge of the above entitled court, at the hour of 1:25 o'clock p.m., October 5, 1944, at the Federal Court House, in Yakima, Washington; the plaintiff appearing by Mr. Harvey Erickson, an Assistant United States Attorney for said district, and the defend-

ant appearing in person and by his attorney, Mr. Ole Sandvig;

Whereupon the following proceedings were had and testimony given, to-wit:

The Court: The defendant has filed a written waiver of a jury. Is the Government willing to waive the jury?

Mr. Erickson: Yes; the Government will waive the jury.

(Mr. Erickson having made an opening statement of the plaintiff's evidence, Mr. Sandvig moved for dismissal on said opening statement, which motion was denied by the Court.) [25]

GEORGE F. ALLEN,

called as a witness by the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. George F. Allen.

Q. Where do you reside?

A. Tacoma, Washington.

Q. What is your business?

A. I am in the printing business.

Q. How long have you been in the printing business? A. Since 1920.

Q. Do you know the defendant in this case?

A. No, I don't.

Q. Have you ever seen him before?

A. At my place of business.

(Testimony of George F. Allen.)

Q. When did he come to your place of business?

A. About the middle of April, about April 15th.

Q. What year? A. This year.

The Court: Where is your place of business?

A. At 1138 Pacific Avenue.

Q. (Mr. Erickson): I hand you plaintiff's identification "A", and ask you to state what that is, Mr. Allen.

A. That is a sample of the job that Mr. Haugen gave us to re-print. [26]

Q. What did Mr. Haugen say when he gave you that sample?

A. I am not quoting verbatim, you understand, but he came in the shop and asked if we could reproduce a job of that nature, and I looked at it and said I could.

Q. Is that the card that Mr. Haugen gave you?

A. Yes, sir.

Q. Is that your writing on the card?

A. Yes, sir; that is my own handwriting on the corner, put on by myself at the time.

Q. Is that card in the same condition now that it was when you received it, with reasonable wear and tear? A. It looks very much the same.

Mr. Erickson: I offer it in evidence.

Mr. Sandvig: It is subject to my general objection.

The Court: It may be admitted.

(Card admitted in evidence as Plaintiff's Exhibit "A".)

[Printer's Note: Plaintiff's Exhibit "A" set out in full at page 186.]

(Testimony of George F. Allen.)

Q. What conversation did you have with Mr. Haugen about printing these tickets at that time?

A. It was Saturday morning, and he asked if we could produce that job by Monday, I think at ten o'clock, and I demurred at first, and we talked it over, and I said "I will have to work this afternoon to do it", which I did, and I gave him the price on the original job, and he said "If you can rush it through, it is worth \$5.00 of my time for you to [27] do it", and I did rush the job through, and delivered it to him on the promised time, and he paid the \$5.00.

Q. I hand you plaintiff's identification "B", and ask you to state what those are?

A. Those are the cards we printed.

Q. Are they in the same condition now that they were when you printed them?

A. Yes, sir.

Mr. Erickson: I will offer them in evidence later.

Q. What was the price of this job you quoted Mr. Haugen?

A. Ten dollars was the original price, and he offered a \$5.00 premium for rushing the job through.

Q. State whether or not it was rushed through?

A. Yes, sir; it was.

Q. When did you complete the job?

A. Monday morning.

The Court: How many did you print?

A. One thousand.

(Testimony of George F. Allen.)

Q. (Mr. Erickson): And what did Mr. Haugen pay you for the job?

A. Fifteen dollars.

Q. What representations did he make to you about his authority to have them printed, if any?

Mr. Sandvig: I object to that as being irrelevant and immaterial.

The Court: I do not think it is material now.

Q. State whether or not you delivered those tickets to Mr. Haugen?

A. He came to the shop and picked them up there.

Mr. Erickson: You may examine.

Mr. Sandvig: No questions.

(Witness excused.)

RITA MAPES,

called as a witness by the Plaintiff, first duly sworn,
testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. Rita Mapes.

Q. Where do you live? A. At Hanford.

Q. When did you move to Hanford, or go there for the purpose of accepting employment?

A. A year ago last April.

Q. Directing your attention to April, 1944, what was your employment at that time?

(Testimony of Rita Mapes.)

A. I was assistant cashier, supervising cashier.

Q. What were your duties?

A. I had to train cashiers to take cash and supervise the checkers.

Mr. Sandvig: That was for the Olympic Commissary Company? [29]

A. Yes, sir.

Q. (Mr. Erickson): You were working for the Olympic Commissary Company at that time?

A. Yes, sir.

Q. What were your duties with reference to meal tickets, if any?

A. The cashiers were to issue the meal tickets to the men and I was to see that they were issued correctly.

Q. Did you have anything to do with their purchasing the meal tickets?

A. I did if we were short of checkers; then I would fill in.

Q. Did you at any time make any examination or observation for spurious or counterfeit tickets?

A. I was there when they first issued the meal tickets, and we were given instructions about them, and I was very well acquainted with them.

Q. I hand you plaintiff's identification "C", and I will ask you to state if you know anything about that identification, Miss Mapes?

A. This meal ticket, with several others, came through the door one evening, and we had been——

Mr. Sandvig: State what you did in regard to it.

The Court: What is it that you are identifying?

(Testimony of Rita Mapes.)

A. This is a meal ticket I turned in to the office that the man gave me. [30]

Q. (Mr. Erickson): Why did you turn that ticket into the office?

Mr. Sandvig: Objected to as being incompetent, irrelevant and immaterial, and calling for a conclusion, why she turned them in.

The Court: The objection is overruled, and an exception allowed.

A. We had been told that a man was going to issue false meal tickets.

Mr. Sandvig: Please.

Mr. Erickson: Are you objecting?

Mr. Sandvig: I object to what she was told.

The Court: I will overrule the objection. It is not hearsay; it is an oral act. She may answer. Go ahead.

A. I noticed this meal ticket, and the meal tickets should be with consecutive numbers, and I noticed some with the same numbers during the course of the evening, about five came in, and also on the side of the meal ticket there is a perforation on one end, and I saw they were all made out to the same name, and I notified the office.

Q. What did you do with that identification?

A. I turned it in to the office. This is the same meal ticket I collected.

Mr. Erickson: I offer it in evidence at this time.

Mr. Sandvig: The usual objection.

(Testimony of Rita Mapes.)

The Court: I will withhold the ruling. It is in no [31] way tied in with the defendant yet.

Q. Going back to the numbers on these tickets, you say that the regular bona fide Olympic Commissary Company meal tickets were numbered how?

A. Numerically.

Q. And you say that you observed several tickets, and what numbers did they have?

A. Ending with the same figure, the same numbers.

The Court: You mean under your system there were no two that would have the same number?

A. That is right.

The Court: And you had several of them with the same number? A. Yes, sir.

Q. (Mr. Erickson) How many did you have bearing the same number?

A. There were three that came in through the mess hall, and I did not see more than that.

Q. You turned this in to whom?

A. To Frank Hales. He was the assistant chief cashier.

Mr. Erickson: I believe that is all.

Mr. Sandvig: That is all.

(Witness excused) [32]

DOROTHY ALLQUIST

called as a witness by the Plaintiff, first duly sworn,
testified as follows:

Direct Examination

By Mr. Erickson:

Q. Your name now is Dorothy Allquist?

A. Yes, sir.

Q. And it was formerly Dorothy Denman?

A. Yes, sir.

Q. During April, 1944, where were you employed? A. At Hanford.

Q. What was your business?

A. I was a cashier checker.

Q. For whom were you working?

A. Mr. Cron was the chief.

Q. For what company or concern were you working?

A. The Olympic Commissary Company.

Mr. Sandvig: You were working for the Olympic Commissary Company and not for the United States?

The Court: You had better wait until your turn comes.

Mr. Sandvig: Yes, I get a little previous.

Q. What was the nature of your duties there at the time?

A. At that time I was checking the meal tickets as they came through the door, punching the tickets.

Q. As the men came in to purchase meals you would punch the tickets? [33]

(Testimony of Dorothy Allquist.)

A. That is right.

Q. And how were the tickets of the Olympic Commissary Company numbered?

A. In consecutive order.

Q. These tickets were secured how by the men?

A. They were purchased at the cashier's office at the mess hall, or at the board room where they were taken on weekly wages.

Q. What did a meal ticket cost?

A. If my memory is correct they cost around \$12.75 per ticket.

Q. And the ticket was punched every day according to the value of the food these men ate?

A. That is right.

Q. And it was your job to punch out the amount of the meal on the meal ticket?

A. That is right.

Q. In April, 1944, did you notice any peculiarity in certain meal tickets?

A. We were told to watch for a certain type of ticket, and I was on the lookout for it.

Q. What type of ticket were you to watch for?

A. A ticket that did not have one edge perforated, as ours did, and also on a smoother paper, and the lines were too fine, and the name was over a straight line rather than a dotted line, and also the serial number was the same. [34]

Q. State whether or not you discovered any of those? A. I did.

Q. Do you recall what the serial number was?

A. It was 321350.

(Testimony of Dorothy Allquist.)

Q. How many of those tickets did you discover?

A. I had one myself. That is all I saw.

Mr. Erickson: That is all.

Mr. Sandvig: That is all.

(Witness excused)

LEROY J. HOLLAWAY

called as a witness by the Plaintiff, first duly sworn,
testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. Leroy J. Hollaway.

Q. Where do you live?

A. At 1929 South Fairview Avenue, Yakima.

Q. Where are you employed?

A. I was working for Redman & Fairchild at Yakima.

Q. In April, 1944, where were you employed?

A. At Hanford.

Q. What were your duties at Hanford?

A. Truck driver.

Q. State whether or not you purchased any meal tickets at Hanford? [35] A. Yes, sir.

Q. How long had you worked there prior to April, 1944?

A. I went there the 2d of February.

(Testimony of Leroy J. Hollaway.)

Q. And during that time you procured several meal tickets from the Olympic Commissary Company?

A. Two or three, I think.

Q. You had gone and procured food on those and they had been punched in the regular manner?

A. Yes, sir.

Q. What did you pay for those tickets?

A. I paid \$12.95.

Q. Directing your attention to the defendant in this case, Richard Roland Haugen, do you know him?

A. Yes, sir.

Q. How long have you known him?

A. Well, I don't know. He came to work after I did.

Q. What name did you call him by?

A. Hogan was the only name I knew.

Q. H-o-g-a-n? A. I think so.

Mr. Sandvig: It was not H-a-u-g-e-n?

A. Maybe it was. I didn't know how to pronounce it.

Q. (Mr. Erickson) I hand you plaintiff's identification "D", and ask you to state what that is.

A. That is the ticket I purchased from Mr. Hogan. [36]

Q. Is that the only one you purchased from Mr. Haugen?

A. That is the only one I bought from him, yes, sir.

Q. How much did you pay for that ticket?

A. Five dollars.

Q. What conversation did you have with Mr. Haugen when you purchased the ticket from him?

(Testimony of Leroy J. Hollaway.)

Mr. Sandvig: I object as incompetent, irrelevant and immaterial, and especially unless it was in the presence of the defendant.

Mr. Erickson: He was talking with Mr. Haugen.

Mr. Sandvig: Yes. All right.

A. He asked if I wanted to buy a meal ticket, and mine was almost gone, and I said yes, I would buy one from him, but I didn't know what kind it was——

Mr. Sandvig: Just answer the question.

The Court: The question is, what did Mr. Haugen say to you.

A. He asked if I wanted to buy a meal ticket, and I told him yes, I would take one.

Q. (Mr. Erickson) There was nothing else said? A. No.

Q. How much did you pay him?

A. Five dollars.

Q. What did you do with the ticket after you procured it?

A. I ate one meal on it, and turned it in to Mr. Piper. [37]

Q. You turned it in to whom?

A. I gave it to Mr. Piper.

Q. You ate one meal at the mess hall of the Olympic Commissary Company on that ticket?

A. Yes, sir.

Mr. Erickson: I offer it in evidence.

The Court: You allege that Mr. Hollaway bought six of them, and he says he bought only one.

(Testimony of Leroy J. Hollaway.)

Mr. Erickson: I will have to go into that a little further.

Mr. Sandvig: Right along that line there is one thing I want to be certain about, and that is this. I am letting this go through with a lot of things going in, but I don't want them to be able to amend the indictment to conform with the proof. In other words, they have charged us with certain acts. Are you going to stay by it or are you going to change it?

Mr. Erickson: We will put in competent legal proof that the law requires.

Mr. Sandvig: I object to anything outside of the things that are charged in the indictment, and it may be understood that goes clear through my objection?

The Court: I understand that. They charge he sold six tickets to Mr. Hollaway, and he says he bought only one.

Mr. Erickson: I would like to ask one or two more questions. [38]

The Court: Go ahead.

Q. Mr. Hollaway, did you personally receive any meal tickets without purchasing them from Mr. Haugen? A. Yes, sir.

Q. How many did you receive without purchasing them from him?

Mr. Sandvig: Just one minute. If what he is trying to introduce now would be a fact then Hollaway is an accessory to the crime.

The Court: That might be.

(Testimony of Leroy J. Hollaway.)

Mr. Sandvig: If that be true, then his testimony is not admissible at this time until they establish some other evidence.

The Court: No; I would have to take that into consideration, if he was an accessory, in passing upon the testimony of Mr. Hollaway.

Mr. Sandvig: He would be an accessory.

The Court: Go ahead, Mr. Erickson.

Q. How many other tickets did you receive without purchasing them from Mr. Haugen?

A. I think it was five or six; I am not sure. I don't recall, but it was five or six. I don't know whether it was five counting the one I paid him for, or six with that.

Q. Have you those tickets now?

A. No, sir.

Q. Do you know where they are? [39]

A. I have a pretty good idea where they are at.

Mr. Erickson: I offer this one in evidence.

The Court: It may be admitted. Exception allowed.

(Meal ticket admitted in evidence as Plaintiff's exhibit "D".)

[Printer's Note: Plaintiff's Exhibit "D" set out in full at page 188.]

The Court: Do you mean you got six for the price of one, or what do you mean by that?

A. He told me—he asked if I wanted to sell them, and he said he would sell them to me for \$5.00, and I could make a little on them if I wanted

(Testimony of Leroy J. Hollaway.)

to, and I didn't think there was anything wrong with the tickets, and I took the other tickets.

Examination by the Court:

Q. You knew the tickets cost \$12.75?

A. Yes, sir.

Q. And that there was no way he could get ahold of them and sell them to you for \$5.00?

A. I didn't think at the time.

Q. How much were you going to pay for them, \$5.00 apiece? A. Yes, sir.

Q. How much were you going to sell them for?

A. I sold them for \$6.00.

Q. How many did you sell?

A. I don't know whether it was four or five of them. Five, I think. [40]

Q. (Mr. Erickson) Do you know to whom you sold those? A. Yes, sir.

Q. (Mr. Erickson) Can you give us those names?

A. I couldn't give you the names now, because I don't remember their names. I just knew them by what the boys called them out there.

Q. (The Court resuming) Did you pay him the \$5.00 after you sold them? A. No, sir.

Q. You just made a clear profit of \$6.00 apiece?

A. I gave each fellow his money back. I didn't make nothing. When I found out what they were, I gave the boys their money back, and got the tickets.

Q. You did not pay him anything?

A. No, sir. Just for the one I got.

(Testimony of Leroy J. Hollaway.)

Mr. Erickson: That is all.

Mr. Sandvig: I think the Court covered my cross examination. That is all.

(Witness excused)

RANDELL P. McDONALD

called as a witness by the Plaintiff, first duly sworn,
testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name? [41]

A. Randell P. McDonald.

Q. Where do you live?

A. At 1906 South Fairview Avenue.

Q. In the city of Yakima? A. Yes, sir.

Q. In April, 1944, and prior thereto, where were you employed?

A. By E. I. du Pont, at Hanford.

Q. In such capacity how long had you worked there prior to April, 1944?

A. I started the second day of February.

Q. And had you during that time consumed food and bought meal tickets from the Olympic Commissary Company? A. I bought two.

Q. And you used those two?

A. I used one of them and almost the other one by that time.

Q. And they had been purchased in the regular way when you got the meals? A. Yes, sir.

(Testimony of Randall P. McDonald.)

Q. Do you know the defendant in this case, Richard Roland Haugen?

A. I met him on the job. He worked at the same place I did.

Q. Did you have any conversation with Mr. Haugen about meal tickets? A. No.

Q. Did you purchase any meal tickets? [42]

A. I purchased one.

The Court: From Mr. Haugen?

A. Yes, sir.

Q. (Mr. Erickson): I hand you plaintiff's identification "E," and ask you to state what that is?

A. That is a meal ticket I bought from Haugen.

Mr. Erickson: I offer that in evidence at this time.

Mr. Sandvig: May I ask one question? Did you use that ticket?

A. I ate one meal off it.

Mr. Sandvig: How much was that meal?

A. Sixty cents.

Mr. Sandvig: And they took the ticket from you later?

A. No, sir; I turned it over to Mr. Piper.

Mr. Sandvig: Then you are the one that was defrauded, and not the United States, is that correct?

The Court: That is something I will have to decide. You do not need to answer that.

Mr. Sandvig: That is all.

The Court: The exhibit may be admitted.

(Testimony of Randall P. McDonald.)

(McDonald meal ticket admitted in evidence as plaintiff's exhibit "E".)

[Printer's Note: Plaintiff's Exhibit "E" set out in full at page 188.]

Q. (Mr. Erickson): How much did you pay Mr. Haugen for that meal ticket?

A. I paid him \$5.00. [43]

Q. What conversation did you have with Mr. Haugen when you purchased it?

A. He asked if I needed a meal ticket and I said yes, and he sold me one for \$5.00.

Mr. Erickson: That is all.

(Witness excused.)

JOHN CRON,

called as a witness by the Plaintiff, first duly sworn,
testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. John Cron.

Q. What is your business?

A. Chief Cashier of the Olympic Commissary Company.

Q. How long have you been such chief cashier?

A. I assumed the duties the 28th of January, 1944.

Q. What are your duties as chief cashier?

(Testimony of John Cron.)

A. Over-all supervision of the cashiers and checkers on the job.

Q. Will you explain briefly how meal tickets are issued by the Olympic Commissary Company?

A. We have two plans, the cash sales, which is just a cash transaction between the cashiers in the mess halls and the customers. The sale price was \$12.98, including the Wash- [44] ington state tax. The other plan was a payroll deduction plan, whereby the employee signed the deduction stub, which is attached to the ticket. The stub is removed from the ticket and the ticket given the purchaser, and the stub forwarded to the du Pont payroll department, and they make the payroll deduction there.

The Court: Do you pay a state tax on this?

A. Yes, sir.

The Court: If this were a Government transaction, Mr. Erickson, there could not be such a tax, it would not be subject to the tax.

Mr. Erickson: The state tax was paid by the man who purchased the ticket, but there was no tax paid on the purchase of the food. It was merely a sale of food.

Witness: It was the sales tax of 3%.

Mr. Sandvig: If it is a government project the United States does not have to pay a sales tax.

Witness: The United States is not purchasing the ticket. The individuals are purchasing the tickets.

Mr. Sandvig: Just answer the questions that are

(Testimony of John Cron.)

asked. This is the proper time to object. We will get into it now. The United States never has to pay a state sales tax.

Mr. Erickson: That is a disputed question. That question is up with the State Tax Commission right now.

The Court: The Supreme Court has held the United [45] States does not have to pay any tax to the state. I think it is an element to be considered. It is admitted there was a sales tax charge?

Mr. Erickson: Yes; that is admitted. But we do not concede that a sales tax was rightly charged, and the State Tax Commission is considering now whether or not that tax shall be charged.

The Court: I do not think it is decisive, but it is a factor to be taken into consideration in determining whether this is a Government transaction or otherwise.

Q. (Mr. Erickson): I hand you plaintiff's exhibit "A," and ask you to state what it is.

A. This particular ticket is good. This is a genuine ticket issued by the Olympic Commissary Company. This is one of our tickets.

Q. What about the stub that goes with the ticket?

A. If the ticket is for cash the stub is destroyed, because it has no value. If the ticket is bought on the payroll deduction plan the stub attachment is removed and forwarded to the du Pont payroll department, and the deduction is made from the employee's wages.

(Testimony of John Cron.)

Q. State how the stubs are numbered.

A. The stub carries the same number the ticket does. They are all serially numbered.

Q. Have you the stub? [46]

A. Yes, sir (indicating). That goes with this. The two are attached in that fashion (indicating), and the purchaser signs his name here, and this is given the customer, and this is forwarded to the du Pont payroll department.

Q. Handing you plaintiff's exhibit for identification "A-1" and the plaintiff's exhibit "A", what is the connection between those two?

A. Apparently these were at one time attached, and the records indicate this ticket, 321,350, was sold to Richard Roland Haugen on March 14, and the receipt of this payroll deduction stub here has been acknowledged by the du Pont payroll department on March 19, and apparently the payroll deduction made on the payroll check for that week ending. This is the authorization by the employee, authorizing du Pont to take it from his salary.

Mr. Sandvig: What is the full name of the company?

A. The E. I. du Pont de Nemours Company.

Mr. Erickson: I offer plaintiffs identification "A-1" in evidence.

The Court: It may be admitted.

Mr. Sandvig: I would like to ask a couple of questions.

The Court: All right.

(Testimony of John Cron.)

Cross Examination

By Mr. Sandvig: [47]

Q. This is Exhibit "E", and you have in your hand Exhibit "A". What is the difference between those?

A. The two would normally join, which would show a perforation mark, and there is none here. The line and the signature——

Q. I am referring now to exhibit "E". Is that the perforation? A. No.

Q. All right. Does exhibit "A" show a perforation mark? A. Yes, sir.

Q. Where?

A. On the edge there. It is obvious.

Q. Isn't that considerably different than that one? They are the same size?

A. Yes, sir. The material difference appears here. There are three lines, name, number and date. There is a dotted line and this is solid, and the word "Tax" appears——

Q. Let me get that.

A. This line, name, badge number, and date. Those are all dotted lines and these are solid lines. That is the difference.

Q. You say they are dotted lines.

A. The words "Richard Haugen," that is a broken line.

Q. Is this a broken line? A. Yes, sir. [48]

Q. "Richard Haugen?" A. Yes.

Q. Where is it broken?

(Testimony of John Cron.)

A. The line on which "Richard Haugen" is written.

Q. Where is it broken?

A. See the dots (indicating).

Q. You might have something there. I will let the Judge look at it. I can't see it. I don't think it is material. Go ahead.

The Court: Do you object to "A-1"?

Mr. Sandvig: Oh, let it go in.

The Court: It is admitted, and an exception allowed.

(Meal ticket stub admitted in evidence as plaintiff's exhibit "A-1".)

[Printer's Note: Plaintiff's Exhibit "A-1" set out in full at page 186.]

Direct Examination—(Resumed)

By Mr. Erickson:

Q. I hand you exhibit "B". Will you pick out one or two cards at random, and I will ask you to state whether or not those meal tickets are genuine or spurious.

A. This (indicating) is counterfeit.

Mr. Sandvig: I object to that as being a conclusion of the witness. That is the very question the Court has to decide. I doubt if we will have any substantial——

The Court: The objection is sustained. You may ask him if in his opinion the tickets are of the same type [49] and printed in the same way as those which have been testified to. If he says "No", he

(Testimony of John Cron.)

can point out the difference between those and the plaintiff's exhibit "A".

Q. Examine a card out of that bunch at random, and state what the differences are between one of those and the plaintiff's exhibit "A".

A. There are differences, two of which I have outlined already. The lack of perforation along the edge of the ticket, the difference between the broken or dotted lines for the name, badge number and date. The dotted line appears on the tickets issued by the Olympic Commissary Company, and these have the solid lines. The third difference we consider outstanding is the word "Tax" is capitalized here, and it is a small "T" on these tickets here, and there is an obvious difference in type, but I don't know so much about that. It looks different. What the different classes of type are, I do not know. There is a difference in the intensity of the red in the No. 7 on the card, denoting the mess hall at which the ticket is to be used, and they all carry the same number, which of course is not done under our system. That is for the control of the tickets.

Q. I hand you plaintiff's exhibits "C", "D" and "E", and ask you to point out the differences on those.

A. All three of these exhibits you have just handed me most [50] recently here have all those identifying marks I was talking about, the capital "T", the solid lines, the straight edge here, which shows a lack of perforation. In other words, this top edge would be attached to this stub, and when

(Testimony of John Cron.)

it is torn off there is a jagged edge along there. These are in good condition, and would show the perforation if it had been there.

Q. In your opinion, Mr. Cron, are exhibits "C", "D" and "E" genuine tickets of the Olympic Commissary Company? A. No, sir.

Mr. Sandvig: That calls for a conclusion.

The Court: I will sustain the objection.

Q. Are you familiar with the cost of food that is used in preparing these meals?

A. Well, if I understand——

Mr. Sandvig: Yes or no.

A. If I understand correctly you mean the cost to the Olympic Commissary Company——

Mr. Sandvig: Answer yes or no.

Mr. Erickson: He does not understand the question.

The Court: You do not understand the question?

A. That is right.

Q. I mean are you familiar with the cost of the food to the Olympic Commissary Company?

A. Yes, sir. [51]

Q. Will you explain that?

Mr. Sandvig: I object to that. You can't introduce such evidence until the corpus delicti has been proved.

The Court: That might be if we had a jury here.

Mr. Sandvig: I appreciate the fact Your Honor is trying this case without a jury.

The Court: Let it go in, and ultimately I will decide whether it should be stricken.

(Testimony of John Cron.)

Mr. Erickson: I will withdraw this witness and put on another witness.

The Court: Any cross examination?

Mr. Sandvig: No cross examination.

(Witness excused.)

C. E. PIPER,

called as a witness by the Plaintiff, first duly sworn,
testified as follows:

Direct Examination

By Mr. Erickson:

Q. Your name is C. E. Piper?

A. Yes, sir.

Q. What is your business?

A. I am a special agent of the FBI.

Q. And as such are you familiar with the investigation of the case of Richard Roland Haugen?

A. I am. [52]

Q. What investigation did you make in this case?

A. On the night of April 30th, Lieutenant Howe of the Hanford patrol, and Lieutenant H. I. McCallahan of the military intelligence, came to me with tickets which they alleged were counterfeit tickets, and they had traced several of these tickets to L. J. Hollaway, and asked me to accompany them to Mr. Hollaway's home to determine whether he was the individual who was circulating these tickets

(Testimony of C. E. Piper.)

at Hanford. I went with them to Hollaway's home that night. Mr. Hollaway told me——

Mr. Sandvig: Well, now.

The Court: The objection is sustained.

Q. You can tell what you did, and eliminate any conversation that was not in the presence of the defendant Haugen.

A. I took from Hollaway a meal ticket which he had——

Mr. Sandvig: I object to that, unless it is connected with the defendant.

The Court: I will overrule the objection, and an exception is allowed.

A. The ticket which Hollaway had in his possession. The next connection I had with the case was on the following morning, on May 1st, when I first saw the defendant, Richard Haugen.

Q. Where did you see him?

A. At the Armory at Yakima. He had reported at that time for [53] a preinduction physical examination to the local draft board. At that time I questioned Mr. Haugen concerning the tickets which had been alleged to be counterfeit tickets. At that time Mr. Haugen readily admitted to me that the tickets which I showed him were counterfeit tickets.

Q. What tickets did you show him?

A. I showed him a ticket which Mr. Hollaway had given me. I also showed him several other tickets which Lieutenant Howe had in his possession. At that time Richard Haugen took these four tickets from his wallet (indicating) and gave

(Testimony of C. E. Piper.)

them to me, and indicated at that time definitely that they were counterfeit tickets.

Mr. Erickson: I offer them in evidence.

Mr. Sandvig: The usual objection.

The Court: The objection is overruled, and an exception allowed.

(Meal tickets admitted in evidence as plaintiff's exhibit "F".)

[Printer's Note: Plaintiff's Exhibit "F" set out in full at page 189.]

Q. What transpired next?

A. During the conversation that followed Mr. Haugen told me that he had a cigar box at his hotel room, at the Commercial Hotel, containing approximately 980 more of these counterfeit tickets, and he told me definitely if I wanted those I could get them by going to his room for them.

Q. Did you do so? [54] A. Yes, sir.

The Court: I thought you said this afternoon this was after the arraignment.

Mr. Erickson: The statements took place after the arraignment. I am coming to that. This is before the arrest.

Mr. Sandvig: I think that is right; this was before he was arrested.

Witness: There was no arrest at all.

The Court: You are getting pretty close to the McNab case when you search his room. Go ahead.

Q. I hand you plaintiff's identification "B", and ask you to state what that is.

(Testimony of C. E. Piper.)

A. This is the box of meal tickets which I found in Room 312 of the Commercial Hotel, which was occupied on May 1st by the defendant, Richard Haugen. It contained 961 counterfeit tickets.

Mr. Erickson: I offer them in evidence at this time.

Mr. Sandvig: Let me ask a few questions.

Mr. Erickson: Yes.

Voir Dire Examination

By Mr. Sandvig:

Q. You said this contains 966 counterfeit tickets?

A. I said 961.

Q. How do you identify it? [55]

A. I took all of these tickets at the time I removed them from the room, and they have been in my possession ever since.

Q. Ever since? Didn't we have them in our possession here for a little while?

A. They have been in your possession only since they were here.

Q. You did not take one out or stick one in?

A. No, sir.

Q. In other words, I am getting mad at you FBI men for going too strong. Do you know whether this particular ticket (indicating) was in there at the time you got it, or not, or did I stick it in there?

A. That I do not know, sir.

Q. You said so in the first place.

A. I only testified there were 961 in the box at the time.

(Testimony of C. E. Piper.)

Q. And I handed you this one and you said this one was in there.

Mr. Erickson: I object to that, Your Honor.

Mr. Sandvig: It doesn't make any difference, but I don't like to have people make statements like that. That is all.

The Court: Plaintiff's exhibit "B" may be admitted.

(Box of meal tickets admitted in evidence as plaintiff's exhibit "B'.) [56]

[Printer's Note: Plaintiff's Exhibit "B" set out in full at page 187.]

Direct Examination Resumed

By Mr. Erickson:

Q. Did you place Mr. Haugen under arrest?

A. Mr. Haugen was placed under arrest on May 1st.

Q. 1944? A. 1944.

Mr. Sandvig: You got these new tickets before you put him under arrest? A. Yes, sir.

Q. (Mr. Erickson): Was he arraigned before the United States Commissioner?

A. He was arraigned on three different occasions. He was brought before the Commissioner, I believe, on May 3d, and again on May 6th. That will be a matter of record. I am not sure of the first date, but the May 6th date I am certain.

Q. Did you take a statement from Mr. Haugen?

A. Yes, sir.

Q. When did you take the statement?

(Testimony of C. E. Piper.)

A. I took the statement from Mr. Haugen after the last hearing before the Commissioner on May 6th.

Q. The last hearing? A. Yes, sir.

Q. And you have the statement?

A. Yes, I do (handing paper to Mr. Erickson).

Q. I hand you plaintiff's identification "G", and ask you to state what that is.

A. This is the signed statement given to me by the defendant, Richard Haugen.

Mr. Erickson: I offer it in evidence at this time.

Mr. Sandvig: Oh, if Your Honor please, that is the same objection we had this morning. It was taken after he was placed in custody.

The Court: But after he was arraigned. It may be admitted. An exception is allowed.

(Statement of defendant to FBI admitted in evidence as plaintiff's exhibit "G".)

[Printer's Note: Plaintiff's Exhibit "G" set out in full at page 190.]

Mr. Erickson: Shall I read it?

The Court: No; I can read it faster. Have you seen it, Mr. Sandvig?

Mr. Sandvig: No.

The Court: We will take a few minutes recess while you examine it.

(After a short recess the trial was resumed as follows, to-wit:)

Mr. Erickson: I haven't finished with the direct

(Testimony of C. E. Piper.)

examination, but I understand Mr. Sandvig wants to question about the statement.

Mr. Sandvig: No; let's go on.

Q. (Mr. Erickson): I hand you plaintiff's identification "H", [58] and ask you to state what that is?

A. It is a photograph of a sign which appears on the Hanford Reservation, a picture of the sign.

Mr. Sandvig: If you will offer them all in evidence, my objection will be the same to all of them. Offer that one.

Mr. Erickson: I offer "H" in evidence. What are your objections?

Mr. Sandvig: The witness says this one appears on the Hanford Reservation. That is what I am afraid of, Judge, that we will get this case where we are trying to make a case out of nothing. In other words, who put it there? Maybe I put it up there. Who had the authority to put it up?

The Court: Let me see the rest of the pictures.

(Pictures handed to the Court)

Mr. Sandvig: They are all in the same category.

Mr. Erickson: They purport to show the general character of the property there inside the mess halls.

Mr. Sandvig: If I put them up there and I did not have any authority, they should have arrested me. That is the danger in this case.

The Court: I will sustain the objection to "M", "L", "K", "J" and "H", and admit "N", "O" and "P", and allow an exception. [59]

(Testimony of C. E. Piper.)

(Photographs admitted in evidence as plaintiff's exhibits "N", "O" and "P".)

Mr. Erickson: I believe that is all.

Cross Examination

By Mr. Sandvig:

Q. Referring to the exhibit the Judge has there, you wrote that? A. Yes, sir.

Q. And he signed it? A. Yes, sir.

Q. And he thought it was all right. I notice the words "good faith", did you explain to him what good faith meant? A. I presume I did.

Mr. Sandvig: That is all.

The Court: All right. Exhibit "G" is admitted.

(Witness excused)

MAJOR R. F. EBBS

called as a witness by the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. Major R. F. Ebbs.

Q. What are your duties at the present time, Major Ebbs?

A. Executive Officer of the Hanford Engineer Works. [60]

Q. How long have you held that position?

(Testimony of Major R. F. Ebbs.)

A. Approximately 19 months.

Q. You reside on the project at Hanford?

A. At Richland, Washington.

Q. I will hand you plaintiff's identification "Q" and ask you what that is, Major?

A. This is a regulation pertaining to delegations of authority from the Commanding General of the Army Service Forces to the Chief of Technical Services.

Q. First I wish to ask you some general questions. Who is the company that is doing the construction work at Hanford?

Mr. Sandvig: If he knows of his own personal knowledge.

Mr. Erickson: He is in charge of the construction.

A. Am I to answer if I know it of my own personal knowledge or officially?

Mr. Sandvig: Of your own personal knowledge.

Q. If you know it officially.

Mr. Sandvig: No; of his own personal knowledge.

A. The E. I. du Pont de Nemours Company.

Q. The E. I. du Pont de Nemours Company is building the project at Hanford?

A. They are the prime contractor.

Q. By prime contractor you mean they have the contract with the United States government? [61]

Mr. Sandvig: I object as not the best evidence. If there is a contract between the du Pont company

(Testimony of Major R. F. Ebbs.)

and the United States, the contract itself is the best evidence.

The Court: I am inclined to agree with you, but I will let him answer and allow an exception, and I may later strike out the answer. I don't know yet.

(Question read by reporter.)

A. Yes.

Q. Now the contract which the E. I. du Pont de Nemours Company has with the United States, is that a public contract, or otherwise?

Mr. Sandvig: May it be understood, Your Honor, without bothering the Court all the time, that I am objecting to all of this?

The Court: It is all subject to your objection, and an exception is allowed.

A. The contract is a secret contract.

Q. By whose orders is it a secret contract?

A. By the War Department.

Q. And you have——

The Court: Wouldn't that be a thing which——

Mr. Sandvig: I am taking it for granted my objection goes to all of this.

The Court: The Secretary of War would issue some sort of an order, would he not? [62]

Mr. Sandvig: Yes, sure.

The Court: That it would be secret?

Mr. Erickson: I will establish that, I think.

The Court: All right.

(Testimony of Major R. F. Ebbs.)

Mr. Sandvig: The order itself would be the best evidence. That is like me saying what the statute is.

The Court: Go ahead, Mr. Erickson.

Q. Did the War Department, or who in the War Department issued that order?

Mr. Sandvig: If you know of your own personal knowledge.

A. The order came to my commanding officer from the office of the Chief of Engineers.

Mr. Sandvig: I make the same objection.

The Court: It is all being admitted subject to your objection.

Mr. Sandvig: I am afraid I will slip up on something.

The Court: You are not going to slip up on anything. You have your objection. It does seem to me, Mr. Erickson, that the order making it secret is something that could be produced.

Q. (Mr. Erickson): Is that something that can be produced?

A. I am not sure it was not a verbal order.

Q. Whom did you receive instructions from that the contract was secret? [63]

A. I received verbal instructions from the office of the Chief of Engineers.

Q. And who in that office?

Mr. Sandvig: Subject to my objection.

Q. From whom in that office did you receive the instructions?

A. I received instructions that individual's name was not to be brought into a public hearing.

(Testimony of Major R. F. Ebbs.)

The Court: What justification could there be for concealing from the public an order which says that the contract is to be secret? He says he has orders to keep secret who gave the order.

Q. Can you answer that question, Major? I am not familiar enough with it.

A. I cannot answer the question. I would be glad to answer the question for the judge in chambers.

The Court: You cannot do that in a criminal case.

Q. If I understand you clearly——

The Court: Nobody is criticising you. You are just following orders, and that is all right.

Q. You will not make the name of the officer public who said this contract should be secret?

A. That is correct.

Mr. Sandvig: Is there some order he should not?

The Court: Go ahead. [64]

Q. What is the relationship of the Olympic Commissary Company to the E. I. du Pont de Nemours Company? A. Subcontractor.

Q. State whether or not the contract between the E. I. du Pont de Nemours Company and the Olympic Commissary Company is a secret contract?

Mr. Sandvig: I want to make the specific objection to that, to keep the record straight. Obviously the contracts themselves would be the best evidence, unless they can show some very urgent reason why it should not be produced.

(Testimony of Major R. F. Ebbs.)

The Court: I am inclined to think you are right, but I will let the Government prove what it can, and I will decide those questions later. Go ahead. The question is is this a secret or a public contract between the Olympic Commissary Company and du Pont.

A. It is a restricted contract.

Q. What is meant by a restricted contract?

A. In the War Department they have four classes of classified documents, supersecret, secret, confidential and restricted.

Q. Is the information available in this trial of the contract between the Olympic Commissary Company and the du Pont company?

A. By order—— [65]

Mr. Sandvig: May it be understood I object to all of this?

The Court: Yes; we all understand that.

Mr. Sandvig: I don't want any question about it later.

The Court: You have said that several times.

Mr. Sandvig: I don't want to butt in every question.

The Court: You have said that too, and yet you keep butting in. Go ahead.

A. By order it is not to be made available.

Q. By order from whom?

A. From the office of the Chief of Engineers.

Q. Do you have those orders?

A. No, I do not.

(Testimony of Major R. F. Ebbs.)

Q. That the contract between the Olympic Commissary Company and the du Pont company should not be made public?

A. I have received those orders.

Q. Who gave you those orders?

A. My commanding officer.

Q. Who is your commanding officer?

A. Col. F. T. Mathias.

The Court: Do you have any reason to believe that Col. Mathias would have any more freedom than you have?

A. He would not have any more freedom, sir.

Q. What is the reason for the contract between the Government and the du Pont Company and the Olympic Commissary [66] Company being secret, if you know?

A. It is considered that the contracts cover a very important construction and operation job, and it would be detrimental to the country to reveal their contents.

Mr. Sandvig: That is hearsay.

A. Those are my orders.

Q. Are you familiar with the way the job is being operated, that is, the way the E. I. du Pont de Nemours Company is proceeding with the contract work there, whether it is a cost-plus contract or a cost-plus fixed-fee, or how the operation is done?

A. I am familiar with that.

Q. Will you explain that?

(Testimony of Major R. F. Ebbs.)

A. The E. I. du Pont de Nemours Company have a cost-plus fixed-fee contract with the Government.

Q. Explain so we can understand——

Mr. Sandvig: The contract itself is the best evidence.

The Court: Yes; this all goes in over your objection.

Mr. Sandvig: I can't resist, it seems so obvious.

Q. Will you explain how the work is being financed, the job there, the construction work?

A. The Government originally made advances to the E. I. du Pont de Nemours Company pursuant to the terms of the contract, from which they procured labor and material for the construction of the Hanford Engineer Works. This ad- [67] vance was used as a revolving fund and other advances have been made, and when that comes to a certain level additional advances are made, or in certain instances payment is made for the procurement of labor and material that is accepted by the prime contractor.

The Court: Mr. Erickson, the exact language the Major uses will be very important. I find it difficult to take it down. Will the Government supply me with a copy of the Major's testimony?

Mr. Erickson: Yes; I would be glad to supply it, and Mr. Ridenour can start immediately on transcribing it.

The Court: All right; thank you. I cannot take all of his language down.

(Testimony of Major R. F. Ebbs.)

Mr. Erickson: No.

Q. So that in the building that is going on there the money you say for the material and labor is supplied by the Government?

Mr. Sandvig: Well——

A. That is right.

Mr. Sandvig: This is going in over my objection. I can't resist putting in the objection.

The Court: Sometimes you can't resist every time you get a chance. Go ahead.

Mr. Sandvig: I know, but he can't testify to that.

Q. And what compensation does the E. I. du Pont Company get [68] for the building that is being developed there? A. A fixed fee.

Q. Is there any objection to disclosing what that fixed fee is, Major? A. One dollar.

Q. So that the building that is being developed there is being paid for, as I understand your testimony, the expense of it and one dollar?

A. Building and operations when the plant goes into production. The fixed fee is one dollar.

Q. The Government is paying all the expense—will you enumerate the expense the Government is paying on the job, as nearly as you can, the general category? A. The general category?

Q. Yes.

A. Everything that comes on to that project is by virtue of the contract and procurement instrument, either by the prime contractor or its sub-

(Testimony of Major R. F. Ebbs.)

cost-fixed-fee contractor and paid for by the Government, and title vested therein.

Q. What is the relationship of the Olympic Commissary Company to the E. I. du Pont de Nemours Company?

A. The Olympic Commissary Company is a subcontractor.

Q. By that you mean what? Explain the term "subcontractor".

Mr. Sandvig The general objection.

A. Generally a subcontractor is one who contracts to do a [69] portion of a job which has previously been contracted, as I understand it.

Q. Now the Olympic Commissary Company in this case, if I understand you correctly, is employed to do a portion of the work which the du Pont Company has agreed to do?

A. That is correct.

Q. And among the things the Olympic Commissary Company has agreed to do is the furnishing of meals and the procurement of food, is that right?

A. That is correct.

Q. Will you explain, Major, the arrangement or the set-up on the commissary for the mess halls? How do they operate?

A. The mess hall is a Government owned building with Government owned equipment, including ranges, tables, in which the Olympic—

Mr. Sandvig: I hate to do it Judge, but I am scared that maybe I haven't put in this, that the

(Testimony of Major R. F. Ebbs.)

questions now are calling for a conclusion of the witness.

Mr. Erickson: I understand that you are objecting to everything.

Mr. Sandvig: He is testifying to the legal effect of an arrangement.

The Court: He is testifying now to the ownership of the equipment. I know because I put the title through myself that the real estate belongs to the Government, and [70] the buildings constructed thereon must necessarily belong to the Government. He is now testifying to the ownership of the equipment in the mess halls.

Mr. Sandvig: I don't want to butt in, but I want to be sure I have everything covered. I will let your Honor decide it later on.

The Court: All right. It will go in subject to your objection, and I will pass on the questions later. Go ahead, Major.

A. The Olympic Commissary Company prepares food in these Government-owned and equipped mess halls to serve the project workers generally. They procure the food and are reimbursed by the Government through du Pont for that food procurement.

Q. Explain just how they are reimbursed.

A. They present invoices received from various food vendors to the prime contractor, supported with Government approval, for the purchase of such food, supported by an Olympic Commissary Company purchase order and receiving reports

(Testimony of Major R. F. Ebbs.)

which are witnessed on an average basis by Government inspectors, and the Olympic Commissary Company issues a check therefor. In turn—I misstated myself. I meant the du Pont Company issues the Olympic Commissary Company a check for it. And they present that to the Government for further reimbursement. [71]

The Court: The Olympic Commissary Company pays for it in the first place?

A. That is correct, sir.

The Court: And they get the money from du Pont and du Pont gets the money from the Government?

A. That is correct, sir. Except that the money is given to the du Pont Company in advance.

The Court: Out of this revolving fund?

A. Yes, sir.

The Court: If I were a baker at Pasco and baked bread and shipped it up there, I would get an Olympic Commissary Company check for it, make out an invoice and get a check for it?

A. Yes, sir.

The Court: And that would have to be approved by a Government inspector?

A. The procurement is approved prior to the services being rendered. That is, it is authorized.

The Court: Under the authorization the Olympic Commissary Company would buy fifty dozen loaves of bread from me per week?

A. Yes, sir.

(Testimony of Major R. F. Ebbs.)

The Court: They determine how much bread is needed in that mess hall, and I am a baker at Pasco, and they authorize the Commissary company to order fifty dozen [72] loaves of bread a week, the Commissary company orders it and I submit my invoice to the Commissary company, and they pay me? A. That is correct.

The Court: And they get the money from du Pont and the money in turn comes out of the Government's revolving fund?

A. That is correct, sir.

The Court: And the same is true of any item of food that is purchased?

A. I would like to modify that to this extent, that procurements of less than \$2,000.00 need not be approved by the Government in advance. They are ratified or confirmed afterwards.

The Court: Is that \$2,000.00 a period?

A. No, sir; that is one purchase.

The Court: For any one purchase?

A. Yes, sir. And we audit very carefully on split purchases to bring it below that amount.

The Court: All right, Mr. Erickson.

Q. (Mr. Erickson resuming): That applies to all food that is procured by the Olympic Commissary Company?

A. For the Hanford Project, yes, sir.

Q. On that job? A. That is correct. [73]

Q. Now, how about the labor, the payment of the labor in the preparation of that food?

A. The labor is paid—the labor is employed by

(Testimony of Major R. F. Ebbs.)

the Olympic Commissary Company. The payment is made by the Olympic Commissary Company to the employee or laborer. The voucher is presented to the du Pont company for reimbursement which in turn is reimbursed by the Government.

Q. The same as for the food? A. Yes, sir.

The Court: Do you know about this? Do you have a payroll voucher per week or for a two-week period? A. A weekly period.

The Court: Is that approved by the Government in any way?

Mr. Sandvig: Subject to my objection.

The Court: This is all subject to your objection.

A. We have prime checkers, and they check the actual workers during that period, and then we make a payroll audit, and a reconciliation of the bank account is a portion of our payroll audit.

Q. (Mr. Erickson resuming): The prepared food after it is set on the table is the property of whom?

Mr. Sandvig: Oh, —

The Court: That purely is a conclusion.

Mr. Erickson: I want to state why I believe I can ask that. [74]

The Court: All right.

Mr. Erickson: This man is the Major in charge of that department, and an officer of the Government, and I think he is entitled in his official capacity to testify to the title to the particular product they have there for sale. That he has qualified himself sufficiently and is sufficiently familiar with

(Testimony of Major R. F. Ebbs.)

the procedure in the purchasing of the food and the labor, so that he is qualified and competent to testify who owns the food there as it sits on the table.

Mr. Sandvig: As a matter of fact, if Your Honor please, I might get to the crux of the matter at this time, in view of his question, if I may examine this witness.

The Court: I will sustain the objection to that question. That is purely a legal conclusion. I let you ask him, for example, what a subcontractor is, and the Supreme Court of this state has said what a subcontractor is, and the witness happened to agree with the Supreme Court of the State of Washington, and I accepted it, but suppose he had given the definition of a subcontractor which was really a materialman, I would have to take the legal definition of a subcontractor. Do I not have to decide who is the owner of this property from the facts the best you can give them to me? [75]

Mr. Erickson: The officer in charge of an air depot or a flying field is competent to testify to the ownership of property that is stolen.

The Court: That is a little different. You are asking the Major how this food is paid for, and then it becomes a question for me to decide who is the owner of it. Mr. La Framboise can testify the Government owns the land out there, because he wrote the checks to pay for it. That is a simple proposition, but when you have a complicated legal question as to who owns the food after it is pre-

(Testimony of Major R. F. Ebbs.)

pared and on the table, I do not think he is entitled to answer, but I will let him answer the question, on the same theory I have permitted the rest of the testimony.

A. We have required the cost-plus-fixed-fee subcontractors to include in their procurement instruments a condition that title vests in the Government upon delivery to the site, or, if I am not mistaken, at the manufacturer's place of business, under certain conditions.

Q. My question was as to the prepared food.

A. Under the circumstances I would say the food is prior to its being prepared and after it is prepared the property of the Government.

Q. Have you a sample purchase order with you?

A. Yes, sir (handing paper to counsel).

Q. I will hand you plaintiff's identification "R", Major, [76] and ask you to state what that is.

A. This is a purchase order used by the Olympic Commissary Company for all of their procurements in connection with their cost-plus-fixed-fee subcontract for the Hanford Engineer Works.

Q. If I understand correctly, all supply purchases are purchased on blanks of this nature?

A. That is correct.

Mr. Erickson: Have you any objection to its being received in evidence?

Mr. Sandvig: The only way I can proceed is to object to everything, unless the Court insists I make it specific.

(Testimony of Major R. F. Ebbs.)

The Court: It will go in, subject to your general objection.

(Purchase Order admitted in evidence as plaintiff's exhibit "R".)

[Printer's Note: Plaintiff's Exhibit "R" set out in full at page 257.]

Mr. Sandvig: My general specific objection, because I don't want to keep objecting. Otherwise I would be objecting to every question.

The Court: I think you are doing that. That is all right. It may be admitted.

Q. State whether or not you are familiar with the sale of these meal tickets.

A. Well, generally, yes. As to the minute details probably not. [77]

Mr. Erickson: I can call another witness who can better testify to that.

Mr. Sandvig: Let me ask some questions.

Cross Examination

By Mr. Sandvig:

Q. Now, Major, I am going to be point-blank on this. I don't mean it as an insult. I know you are trying to do the right thing about this thing. I appreciate that. You said that the du Pont company, I think it is the E. I. du Pont de Nemours Company, or something, but I will call it the du Pont company, have a contract with the United States of America?

A. Yes, sir.

Q. And you say it is a cost-plus contract?

A. I said it was a cost-plus-fixed-fee contract.

(Testimony of Major R. F. Ebbs.)

Q. What is the date of that contract; do you recall? A. No, I do not.

Q. Who signed it; do you recall?

A. That is classified information.

Q. It certainly can't be a mystery about who signed it.

Mr. Erickson: He said it was.

A. I would like to explain to the Court.

The Court: If there is any question you cannot answer say you cannot answer it, because you are under orders not to answer.

Q. You have seen the contract? [78]

A. Yes, sir; I have.

Q. And you know what they are building out there and everything, do you?

A. Yes, sir; I do.

Q. And you have seen all the terms and conditions of it?

A. I have read the contract several times.

Q. Where is the contract, the original contract, or did you read the original?

Mr. Erickson: I object as immaterial.

Q. Did you read the original contract?

A. No; I did not.

Q. Do you know where the original contract is?

A. Yes, sir; I do.

Q. But you have never seen the original contract?

A. I never read the original contract. I have seen it.

(Testimony of Major R. F. Ebbs.)

Q. The original contract?

A. That is right.

Q. You have seen it? A. Yes, sir.

Q. Where did you see it?

Mr. Erickson: I don't know that that is material.

A. The original contract was processed by the general accounting office.

Q. Processed. What do you mean by processed by the accounting office? [79]

A. I mean it went through a series of channels to finally terminate in the general accounting department.

Q. They sent the original contract to all of these offices?

A. They sent the original contract to those who have been cleared to receive that classified information.

Q. You know I understand your position. I don't want to get any secrets, but I do want to know—how many pages are there to that contract?

A. I couldn't say.

Q. You can't give the number of pages even?

Mr. Erickson: I object as immaterial.

The Court: I will sustain the objection.

Mr. Sandvig: If Your Honor please, my idea is this. I have not seen the contract.

The Court: No, I guess you haven't.

Mr. Sandvig: I am very dubious about this. To put it in other words, supposing it is a contract of 100 pages or 500 pages. I am going into his ability

(Testimony of Major R. F. Ebbs.)

to interpret that contract, and to give us the legal conclusion which he is attempting to give.

The Court: You are testing the accuracy of his statement.

Mr. Sandvig: Yes.

The Court: I do not see that the number of pages has anything to do with that. [80]

Mr. Sandvig: I read this indictment several times and there is still a legal question in my mind about that indictment.

The Court: He said he read the contract several times.

Q. You read the contract several times, the original contract, is that right?

A. I have never read the original contract.

Q. You have never read the original contract. I don't imagine Germany or Japan would care who signed the contract.

The Court: He said he cannot tell you, and that is the end to that.

Q. All right. Now then that was a cost-plus contract?

A. It was a cost-plus-fixed-fee contract.

Q. All right. Was there any provision in that contract in regard to this situation? Suppose I went down there with a whole gang of men tomorrow, or a whole army, and started to haul off everything that the du Pont company owned down there, and they permitted me to do it, who would have to pay the cost, the Government or the du Pont company, under the terms of that contract?

(Testimony of Major R. F. Ebbs.)

Mr. Erickson: Oh, I object to that question.

The Court: I will overrule the objection. He may answer the question.

A. The Government.

Q. The Government would pay it anyway. Is there any pro- [81] vision in that contract—I don't want you to disclose any secrets—but is there any provision in that contract where the du Pont company has to do anything—use any reasonable precaution?

A. There is a termination clause in the contract if they don't use reasonable precaution.

Q. This termination contract then, that they have to use some precaution, what are the terms of that, what precaution are they supposed to use?

A. The termination clause you refer to, is that what you refer to?

Q. Yes. What precaution are they supposed to use, to keep me from carrying off the place, are they supposed to use any precaution?

A. I would say they are obligated to use the ordinary diligence of any normal business concern.

Q. You say that. Do you remember the phraseology of the contract in respect to that?

A. It is an option of the contracting officer as to when he may exercise the termination clause.

Q. What are the conditions under which the officer may exercise that termination clause?

A. I do not believe I would be permitted to answer that question.

(Testimony of Major R. F. Ebbs.)

Q. That is what I am getting at, is simply this, and I am [82] not insulting about it. It was a voluminous contract, was it not?

Mr. Erickson: That would not make any difference, and I am objecting to it as being immaterial.

A. I did not refuse to answer the other question on the basis I didn't know. I said I could not reveal that information. I did not say I do not have that information.

The Court: If he had said he simply looked at the contract once, I would have permitted you to ask him if he looked at it one minute, ten minutes, or two hours.

Mr. Sandvig: He said he never saw the original.

The Court: He has seen the original and has read a copy of it several times. I do not think it makes any difference how voluminous it is.

Q. Where did you see the copy?

A. I have jurisdiction over one copy.

Q. How do you know it is a copy?

A. It is authenticated.

Q. By whom?

A. By competent authority.

Q. But by whom?

A. Well, I have to say I cannot reveal the identity of certain persons.

Q. Do you suppose that Germany or Japan care who signed it?

The Court: That has nothing to do with deciding this [83] question.

Mr. Sandvig: It is just unfortunate that the

(Testimony of Major R. F. Ebbs.)

Government can't introduce it in evidence, but I don't want my client convicted just because——

The Court: There is no use arguing with the witness about that.

Mr. Sandvig: I guess it is a religion with the Major, but I have no argument with the Major.

Q. All right. This contract between the Olympic Commissary Company and du Pont, have you seen that? A. Yes, sir.

Q. Where is that?

A. I have jurisdiction over a copy of that.

Q. And that in substance provides just for the feeding of these people?

A. Will you restate the question?

Q. That is just for feeding the workmen down there, is that what it provides in respect to?

A. It provides for the operation of the barracks and for the feeding of the people there, and certain canteen sales.

Q. What is there secret about that?

The Court: He says he has received orders it is to be a restricted contract.

Q. From whom did you receive such orders, that it was a restricted contract? [84]

A. I testified I cannot reveal the identity of the persons. It came from the office of the Chief of Engineers.

Q. It came from the office of the Chief of Engineers; and by whom was it signed?

The Court: He has testified he cannot reveal that.

(Testimony of Major R. F. Ebbs.)

A. I can testify who signed the Olympic Commissary Company contract.

The Court: All right.

A. The contract with the Olympic Commissary Company was approved by my commanding officer.

Q. Who is your commanding officer?

A. Lt. Col. F. T. Mathias.

Q. How long have you known him?

A. Approximately 21 months.

Q. Did you ever see his commission?

A. No, I have not.

Q. If I came down there and represented myself as a Major General would you take my word for it, too?

A. I would like to answer that with a question.

Q. You would not know but from the commission. Would you take my word for it, and follow my orders?

A. I have evidence he is a lieutenant colonel.

Q. What evidence have you got?

A. Mr. Erickson is about to present that.

Mr. Sandvig: All right. I want to find out. [85]

Mr. Erickson: I will offer it in evidence. I will let the Major describe it.

The Court: Tell us what it is.

A. This (indicating) contains an extract from the orders and written up and published by the Chief Engineer's office, delegating authority to division and district engineers to act as contracting officers, and also the authority from the District Engineer to Lt. Col. Mathias to act as contracting

(Testimony of Major R. F. Ebbs.)

officer and carry out certain other functions, including the right of certain redelegation of authority.

Q. The first page, this is a delegation of ministerial and contractual authority of Area Engineer, and signed by J. C. Marshall, Corps District Engineer. Do you know Mr. Marshall?

A. Yes, sir; I know him.

Q. Do you know his signature?

A. Yes, sir.

Q. How often have you seen him sign?

A. This is under the War Department seal by the Secretary of War.

Q. I am asking a question.

A. I have known him for 21 months, approximately.

Q. When did the Colonel get the order?

A. Right there.

The Court: It is an authenticated copy, and the [86] statute provides an authenticated copy is admissible in evidence.

Mr. Sandvig: I do not like to disagree with Your Honor, but it is not authenticated.

The Court: He said it is. It is certified by the Secretary of War through his assistant Chief Clerk, Mr. Cook. It is an authenticated copy. It may be admitted.

(Extract of Orders admitted in evidence as plaintiff's exhibit "S".)

[Printer's Note: Plaintiff's Exhibit "S" set out in full at page 260.]

(Testimony of Major R. F. Ebbs.)

Q. You do not pretend to know the exact terms and conditions of this contract between the Olympic Commissary Company and the du Pont company, do you? A. I do not pretend to?

Q. Yes.

A. No; there is no pretense there.

Q. You do not pretend to know the exact terms and conditions of the contract. The Olympic Commissary Company has no contract with the United States direct? They are subcontractors under du Pont? A. That is right.

Q. They have no contract with the United States. They just account to du Pont?

A. Yes; that is right.

Mr. Erickson: This is the regulation (indicating).

The Court: Is that authenticated, too? [87]

A. Yes, sir.

The Court: It may be admitted.

(Regulation admitted in evidence as plaintiff's exhibit "Q".)

[Printer's Note: Plaintiff's Exhibit "Q" set out in full at page 192.]

Q. You know what they do more or less in practice in regard to these things, but you are not sure that is in accordance with the contract?

A. What contract?

Q. Oh, any of these contracts.

A. It is my business to know what they do pretty much.

(Testimony of Major R. F. Ebbs.)

Q. You are not a lawyer?

A. No, I am not.

Q. Have you consulted a lawyer as to the interpretation of this contract?

A. I have a very competent legal staff.

Q. And do they have access to this contract, too?

A. Indeed.

Q. The original or just a copy of it?

A. Which contract?

Q. The du Pont-United States contract.

A. I have testified that the original is filed with the General Accounting Department.

Mr. Sandvig: I think that is all. I may want to recall him. [88]

Redirect Examination

By Mr. Erickson:

Q. There is one matter I neglected to ask about, and that is in regard to state taxes. I will ask you about the payment of business and occupational tax on the purchases by the Olympic Commissary Company.

A. The business and occupational tax of the Olympic Commissary Company?

Q. Yes.

A. That is not paid to the State of Washington.

Q. What taxes are paid to the State of Washington by the Olympic Commissary Company, if any?

A. The only tax that I know of which is turned over to the State of Washington is that which is

(Testimony of Major R. F. Ebbs.)

collected from civilians eating at the Olympic Commissary operated mess halls, and that tax is that which is applicable to the civilian cost of the meal, and not that which is applicable to the Government cost of the meal. By that I mean the meal is subsidized.

Q. Will you explain what you mean by that part of the meal that is subsidized?

A. There is a standard charge for meals on these meal tickets that we have seen tonight. They run 62c including tax. The individually purchased meals are sold at 67c. All meals—I mean by that breakfast, luncheon or dinner—are the same price, and it has cost the Government more to produce that meal than has been charged to the consumer. [89]

Q. So the portion of the meal subsidized by the Government is not subject to the state sales tax?

A. That is right.

Q. And the rest of the charge and cost of the meal is subject to the state sales tax?

A. That which the consumer pays for.

Mr. Erickson: That is all.

Recross Examination

By Mr. Sandvig:

Q. What about the Workmen's Compensation Act?

Mr. Erickson: I object as incompetent, irrelevant and immaterial.

Mr. Sandvig: He said that was the only tax.

Mr. Erickson: They have a special agreement with the State on that.

(Testimony of Major R. F. Ebbs.)

Q. Do you pay a Workmen's Compensation state tax?

Mr. Erickson: I object to this.

The Court: I feel the same way about that as I did about many of the questions you asked. I will let him answer.

A. The Workmen's Compensation is handled under a special arrangement with the State of Washington.

Q. Is that a contract between the United States and the State of Washington, or is it a congressional act or a state act, or who had the authority to make such an arrangement? [90]

Mr. Erickson: I object to the authority. He can tell what it is.

The Court: Tell what the arrangement is.

A. The arrangement is again the revolving fund deposit from which claims are paid, as decided by the proper state authorities.

Q. In other words, they do not pay it directly to the State? A. That is right.

Q. Is that correct? A. That is right.

The Court: You set up a fund in lieu of the state compensation fund, is that it?

A. Yes, sir.

Q. (Mr. Sandvig): It is paid by the State of Washington, is it not, direct? I have had several of them at Hanford, and they are paid directly by the State of Washington, are they not?

A. In this case the Government carries its own insurance for such claims.

(Testimony of Major R. F. Ebbs.)

Q. You mean if someone is injured like a carpenter or a builder, he isn't entitled to compensation under the state law?

A. He is entitled to compensation under the state law, and it is paid——

The Court: The compensation is paid in conformity with the state law? [91]

A. Yes, sir.

The Court: But out of a fund which the Government sets up.

Mr. Sandvig: That is all I can think of right now. I have asked too many foolish questions already.

(Witness excused.)

E. E. RIGGIN,

called as a witness by the Plaintiff, first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. E. E. Riggin.

Q. What is your business, Mr. Riggin?

A. Assistant Chief Accounting Officer of the E. I. du Pont de Nemours Company.

Q. How long have you been such?

A. I have been with the company 17 years. For four years I was Assistant Chief Accountant.

Q. Are you familiar with the relationship be-

(Testimony of E. E. Riggins.)

tween the E. I. du Pont de Nemours Company and the Olympic Commissary Company?

A. Yes, sir.

Q. How about the sale of meal tickets, are you familiar with the system used at Hanford? [92]

A. Yes, sir.

Q. Will you explain the sale of meal tickets and how the proceeds from the sale of meal tickets are handled by the Olympic Commissary Company?

A. The meal tickets themselves are purchased both by the E. I. du Pont de Nemours Company, and the Olympic Commissary Company. They are sometimes purchased directly by the Olympic Commissary Company, and sometimes they are purchased directly by the du Pont company, and if the Olympic Commissary Company purchases them, they submit their invoices to us, after paying the check, after paying the vendor, and we sent the check to the Olympic Commissary Company.

The Court: You mean the physical act of buying the tickets from the printer?

A. Yes, sir. That is done both by the du Pont company and the Commissary company. These invoices—after the check is drawn and the check is retained by the Olympic Commissary Company, then those invoices are forwarded to us for approval, and payment, subject to the rules and regulations laid down by the Government audit section. After the bills are paid by us—

Mr. Sandvig: Who do you mean by “us”?

A. The E. I. du Pont de Nemours Company. We

(Testimony of E. E. Rigglin.)

forward them a check and upon the receipt of that check they in turn [93] forward their check to the vendor—the printer, in this case. After we have forwarded the Olympic Commissary Company our check in payment of that invoice, we in turn bill the Government through the regular public voucher form, and we receive a check for that. That covers the purchase of the tickets.

Q. How is the money from the sale of tickets handled?

A. The money from the sale of tickets is handled in two methods. Some are sold by the Olympic Commissary Company for cash, and others are sold by the payroll deduction plan. Those sold for cash daily, the cash is accumulated, counted and checked and verified and deposited in a bank account in the name of the E. I. du Pont de Nemours Company—not to the account of the Olympic Commissary Company, but in the name of the E. I. du Pont de Nemours Company—which is the account in which we have formerly made our deposit of the original advance. This money together with the advance at the time we opened the bank account, is used as a revolving fund for payment of all bills covering the work or expenses on the project. The E. I. du Pont de Nemours Company has no money on this project. All payments are made from funds supplied by the Government.

Q. So that the money from the sale of meal tickets goes into the general fund? [94]

A. It goes into the du Pont general fund for

(Testimony of E. E. Riggins.)

carrying on the business of the Hanford Engineer Works.

Q. And out of what funds are the groceries and meats and supplies for the mess halls paid?

A. They are purchased by the Olympic Commissary Company from their own funds—shall we say in a funny sort of way. They purchase it and draw the check and hold the check until we give them Government money, and then they mail the check, but in most instances or in all instances they have Government funds supplied by us prior to the time of paying the bills, and there is a question whether you would call it Government funds or Olympic Commissary Company funds.

Q. How do you explain that kind of accounting?

A. I cannot. The only way I can explain it, I would say they do not have the necessary capital to carry on the business, and therefore they must wait for reimbursement first. It is not good accounting.

Q. I hand you plaintiff's identification "T", and ask you to state what that is, in your own language.

A. I will have to call it by pages.

Q. First, they relate to what—all those papers?

A. That is a difficult question, because several are records of purchases and invoices and public vouchers. In other words, we have the entire result. I can start at the front.

Q. All right. [95]

A. The first is a record of purchase. It is a document made out recording from whom we have received quotations. From this the vendor has been

(Testimony of E. E. Riggins.)

selected by the Olympic Commissary Company, and the product purchased in this case is 1,250 cases of milk at a price. The McClintock-Trunkey Company was selected as the low bidder. This is the record of the bidder. This is the copy of the purchase order which covers the actual purchase as submitted to the low bidder. This is the invoice received by the Olympic Commissary Company from the vendor, covering the billing of said milk. This is the total price. This is the check number, and this is the date it was paid, if you can call the date of the check the date of payment. This is the receiving report showing receipt of the product. This is what is known as a public voucher, a billing to the Government by the du Pont company, who has already paid the Olympic Commissary Company for these items. In this case this is a nonpayment voucher, a credit to apply to payments previously made to carry on the work, and at times we find we may have more capital than is necessary and we send it back in the form of a check or in the form of a credit rather than a reimbursement, and not carry more money than is necessary, so we can distribute the money around the country as much as possible. This is the detail figure backing up the public voucher. There may be forty items billed on this. This is just a record of [96] the nonpayment voucher, and this is the billing to us.

Q. I call your attention to the first sheet on exhibit "T" for identification, and ask you whether

(Testimony of E. E. Riggin.)

or not the order has been approved by the Government?

A. Yes, sir. The order must be approved because it is more than \$2,000.00, and there must be prior approval by the Government prior to the time the Olympic Commissary Company can make the purchase.

Q. And if it is under \$2,000.00?

A. It may be approved afterwards. The Government cannot hope to approve all small items, and they selected the amount of \$2,000.00, and over that amount they must approve it prior to the purchase.

Q. Are you familiar with the title to the food when it is prepared in the mess halls?

A. Yes, sir.

Q. Whom would you say that food belongs to?

Mr. Sandvig: Oh——

The Court: I will sustain the objection. This is an officer of the du Pont company, and not of the Government.

Mr. Erickson: May I ask this officer if du Pont owns the food?

The Court: No.

Mr. Erickson: I offer this in evidence. [97]

Cross Examination

By Mr. Sandvig:

Q. As I understand it, this first sheet, these bills are paid by the Commissary company?

A. You are not far enough down for that.

Q. Yes. That is paid by the Olympic Commissary Company to whomsoever it is purchased from?

(Testimony of E. E. Riggin.)

A. Yes, sir.

Q. And the Commissary company gives its check for it? A. Yes, sir.

Q. And the yellow sheet shows where the du Pont people pay to the Olympic Commissary people the amount? A. Yes, sir.

Q. In other words, the Olympic Commissary Company is paid by the du Pont company all the time?

A. For the time being. The Government can pay direct to the Olympic Commissary Company at any time they deem it necessary.

Q. There is no contract between the Olympic Commissary Company and the Government, is there? They are just subcontractors under du Pont? A. That is right.

Q. There is no fiduciary relation or agency or any other relation between the Olympic Commissary Company and the Government? [98]

A. I do not think I can answer that.

Mr. Sandvig: I think it does call for a conclusion.

Mr. Erickson: I would like to ask permission to substitute photostatic copies for the originals.

Mr. Sandvig: That is all right.

The Court: It may be admitted.

(Vouchers, invoices, etc., admitted in evidence as plaintiff's exhibit "T".)

[Printer's Note: Plaintiff's Exhibit "T" set out in full at page 268.]

(Testimony of E. E. Riggin.)

Mr. Erickson: I would like to offer one exhibit that was not offered, at this time, exhibit "C".

The Court: It may be admitted, subject to the same objections.

(Meal ticket admitted in evidence as plaintiff's exhibit "C".)

[Printer's Note: Plaintiff's Exhibit "C" set out in full at page 187.]

Mr. Erickson: The Government will rest.

The Court: All right, Mr. Sandvig.

Mr. Sandvig: I take it for granted Your Honor is going to take this under advisement.

The Court: Yes.

Mr. Sandvig: As a matter of fact, I am not going to put my client on the stand. May I have until tomorrow morning to decide whether I will rest or not at this point? I might have a couple of questions to ask after I examine the exhibits. [99]

Mr. Erickson: Some of these witnesses are planning on going home. Do you want to keep them over until tomorrow morning?

Mr. Sandvig: No; that is asking too much. I don't think we should keep them here.

The Court: The witnesses will be excused, and the case will go over until 9:30 tomorrow morning.

(An adjournment was then had to the hour of 9:30 o'clock a.m., October 6, 1944, at which time all parties being present as heretofore, the trial was resumed as follows, to-wit:)

Mr. Sandvig: We rest.

The Court: How soon can you get your brief in, Mr. Erickson?

Mr. Erickson: Can you give us two weeks?

The Court: That is all right.

Mr. Sandvig: May I have ten days after that to answer?

The Court: Yes; and you may have five days to reply.

Mr. Sandvig: I assume the trial is still in progress and the bond stands?

The Court: Yes.

(This cause was then adjourned.) [100]

[Title of District Court and Cause.]

COURT REPORTER'S TRANSCRIPT OF TESTIMONY

Be It Remembered that the above entitled and numbered cause came on for hearing on the taking of additional testimony, on motion of the plaintiff, before the Hon. L. B. Schwellenbach, Judge, at the Federal Building, at Yakima, Washington, at the hour of 10:00 o'clock a.m., April 11, 1945; the plaintiff appearing by Mr. Harvey Erickson, an Assistant United States Attorney for said District, and the defendant appearing in person and by his attorney, Mr. Ole Sandvig;

Whereupon the following proceedings were had and testimony given, to-wit:

Mr. Erickson: May it please the Court, the Government is ready in the matter of the United States

vs. Haugen, to present further testimony as to both contracts, the one between the United States Government and the du Pont company, and the du Pont company and the Olympic Commissary Company, in conformity with the Court's order in the reopening of the case. [101]

The Court: Mr. Erickson, you may call your witness, and you may make your objection, Mr. Sandvig, when he asks his first question.

Mr. Sandvig: Yes.

LT. COL. RALPH G. CORNELL,

called as a witness by the Plaintiff, first duly sworn, testified as follows:

The Court: Do not answer the first question, Colonel, until Mr. Sandvig has had an opportunity to object.

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

Mr. Sandvig: At this time, if the Court please, I want to object to the introduction of any evidence in this case—any further evidence in the case—on the ground and for the reason that the defendant has already been dismissed from the charge predicated against him, and that he has been in former jeopardy.

I just want to make this observation at this time. Your Honor wrote an opinion of the Court. It was signed by Your Honor. You went into the facts. You make your conclusions at considerable length.

(Testimony of Lt. Col. Ralph G. Cornell.)

I do not know of any particular form of findings of fact and conclusions of law or decree or judgment that are required, but you go into it at great length.

The Court: I say at the end that the action must be dismissed. [102]

Mr. Sandvig: Yes. And I say it is dismissed.

The Court: I will overrule the objection. There was no order of dismissal entered, as I construe it.

Mr. Sandvig: I can argue it at length later on, but I think this is an order of dismissal.

The Court: My present understanding at least is that an opinion of the Court is not an order of the Court. It requires a formal order to constitute a formal dismissal. I held under the facts as they were presented at the previous hearing, in view of the necessity which I felt I was under to exclude all the testimony of Major Ebbs, in so far as it referred to the contract, that the Government had not proven its case. I said it must be dismissed under those circumstances, but I did not actually dismiss it, so for the present I will overrule the objection, and the witness may proceed to testify.

Q. (Mr. Erickson): Will you state your name, please?

A. Ralph G. Cornell.

Q. What is your business?

A. I am the legal advisor to the Chief Engineer at Washington, D. C., on contracts and claim matters, and general legal problems.

Q. Are you connected with the United States Army?

(Testimony of Lt. Col. Ralph G. Cornell.)

A. Yes, sir. I hold a commission as Lieutenant Colonel in the United States Army, at the present time on an inactive status. [103]

Q. How long have you been on an inactive status? A. Since January 9, 1945.

Q. Directing your attention to the contract between the United States Government and the E. I. du Pont de Nemours Company for the construction of the Hanford Engineer Works, are you familiar with that contract? A. Yes, sir.

Q. How do you happen to be familiar with that contract, Colonel?

A. I served from the first of September, 1942, until I reverted to an inactive status, as chief of the legal staff of the Manhattan District, in which capacity I had charge of the negotiation of all contracts, and supervision in the drafting and execution of those contracts.

Q. Did you have charge of and supervision over the drafting of this contract for the construction of the Hanford Engineer Works between the United States Government and the E. I. du Pont de Nemours Company? A. I did.

Q. Are you familiar with the original contract?

A. I am.

The Court: I should like to have some testimony from this witness as to his background in reference to his legal training, in view of the suggestion I made in the opinion. [104]

Q. Will you state what your legal education has been, first?

(Testimony of Lt. Col. Ralph G. Cornell.)

A. I am a member of the bar of the District of Columbia, and of the Maryland Bar, the District Court of Appeals, and the Supreme Court of the United States.

Q. How long have you been a practicing attorney? A. About 23 years.

Q. During that time have you worked for yourself or have you worked for the United States, or just what has been the nature of your practice in those 23 years?

A. I was in private practice for myself about two years after I was admitted to the bar, and subsequent to that time I have been acting in a legal capacity with different branches of the government service.

Q. Are you a graduate of a law school?

A. Yes, sir.

Q. Which law school?

A. The George Washington University.

Q. Are you familiar with the contract I referred to a moment ago, Colonel? A. I am.

Q. Do you have with you an original of that contract?

A. I have with me an original copy of the du Pont contract, and an original copy of the Olympic Commissary contract.

Q. How many originals are there of the contract between the United States Government and the E. I. du Pont de Nemours Company [105]

A. Three copies.

(Testimony of Lt. Col. Ralph G. Cornell.)

Q. You have one of the three with you?

A. That is right.

Q. Where are the other two copies?

A. All construction contracts are executed in triplicate. That means three original copies. One copy is furnished to the contractor, one copy is furnished to the General Accounting Office, and in the case of War Department contracts, one copy is furnished to the particular technical service, in this case the Office of the Chief of Engineers.

Q. Now that contract between the United States Government and the E. I. du Pont de Nemours Company, is that a secret or a public contract, or how is it classified?

Mr. Sandvig: That calls for a conclusion of the witness, whether it is secret.

The Court: I will sustain the objection. You can ask what was done. The witness can explain what was done with reference to the various classifications of contracts.

Q. Yes. What was done by the War Department in regard to making various classifications in regard to contracts?

A. Under the regulations of the War Department contracts are classified as secret, confidential and restricted, according to the nature of the contract, and the content and the nature of the work covered by the contract. [106]

Q. And the particular contract between the Government and the du Pont company is in which category?

(Testimony of Lt. Col. Ralph G. Cornell.)

Mr. Sandvig: I object to that as calling for a conclusion. There must be some semijudicial determination as to what type of classification it would be put in.

The Court: The objection is overruled.

A. Under the regulations of the War Department the determination as to the classification of the contract is fixed, of course, first of all, and the Secretary of War, the Undersecretary of War, the commanding generals of the various service commands and the commanding general of each post or station, may determine under the army regulations whether a contract should be classified and the character of the classification.

Q. How has this contract been classified?

Mr. Sandvig: Objection.

The Court: The objection is overruled.

A. This contract has been classified as secret.

Q. Are you familiar with the contract between the E. I. du Pont de Nemours Company and the Olympic Commissary Company? A. I am.

Q. Did you have anything to do with the negotiation of that contract?

A. I had nothing to do with the negotiation of it. [107]

Q. How many times have you read that contract, just roughly speaking?

A. The contract was referred to the commanding officer of the Manhattan Engineer District for his review prior to its approval, and at that time

(Testimony of Lt. Col. Ralph G. Cornell.)

I reviewed the contract and recommended it for approval.

Q. Have you read that contract a number of times or not? A. Yes, sir.

Q. Are you familiar with its provisions?

A. I am.

Q. Do you know of your own knowledge whether or not the Secretary of War and the Undersecretary of War of the United States approved the classification?

Mr. Sandvig: I object to that as calling for a conclusion of the witness. The declaration of the Secretary of War would be the best evidence.

The Court: The objection is overruled.

Q. Of the Government and the du Pont company contract?

A. This particular contract under our regulations was required to be presented to the Secretary of War or the Undersecretary of War for his approval. It was presented to him. The contract bears his signature of approval, which approval goes to the form of the contract—the contents of the contract—its classification, and all other matters pertaining to the document. [108]

The Court: You said the Secretary of War or the Undersecretary of War. Which one do you mean?

A. The Undersecretary of War acts on all matters relating to contracts.

The Court: Who was Undersecretary of War at that time?

(Testimony of Lt. Col. Ralph G. Cornell.)

A. The Undersecretary was Robert Patterson.

Q. (Mr. Erickson resuming): Going to the contract between the E. I. du Pont de Nemours Company and the Olympic Commissary Company, will you give the category that contract falls into, whether or not it is secret or restricted?

Mr. Sandvig: The same objection.

The Court: The objection is overruled.

A. That contract falls into the classification of a restricted contract.

Q. What do you mean by a restricted contract?

A. A restricted contract is a form of a secret contract. The difference between secret and restricted governs the handling of the contract, the people who are authorized to see it, and the manner in which it has to be transported and mailed, and matters of more or less of an administrative character, and the handling and the performance of it. A restricted contract is not quite so—the procedure is not quite so restricted as a secret contract. A secret contract cannot be shown to persons or even employees of the Government who do not have some part to [109] play in the performance of it, and then it is the practice usually to confine their information to only such portions of it as are necessary in the performance of their particular duties. A restricted contract can be handled by any employee of the Government. The primary thing to be accomplished under a restricted contract is to prevent its being—any information in connec-

(Testimony of Lt. Col. Ralph G. Cornell.)

tion with it being furnished to the press or publicized in any manner, shape or form.

Mr. Sandvig: A restricted contract can be handled by any employee of the Government?

A. Yes, sir.

Mr. Sandvig: Including the judges of the District Courts?

A. You are asking me a close question. It can be explained to and handled by anyone who has a function to perform in the performance of it. Whether that would include the Federal Judge, I do not know. However, I do not think I would hesitate to show the judge the contract if he wants to see it.

Q. (Mr. Erickson resuming): It is not permissible to show any of those classifications of contracts to the general public?

A. That is right.

Q. Now directing your attention to the contract between the United States and the E. I. du Pont de Nemours Company [110] for the construction of the Hanford Engineer Works, on what date was that contract entered into, Colonel?

A. The Olympic Commissary Company contract?

Q. No; the contract with the du Pont company.

A. The letter contract was issued October 3, 1942. The formal contract was dated November 6, 1943.

Mr. Sandvig: May the record show the witness is now referring to one of the original contracts in his testimony?

(Testimony of Lt. Col. Ralph G. Cornell.)

Mr. Erickson: Yes.

The Court: Yes.

Q. You say the contract with the du Pont company was entered into on October 3, 1942?

A. That was a letter contract. In contracting for large projects of this kind, it has been customary during the war to start the contract off with a letter contract, which is merely an order to a contractor that the Government will place a contract with him for certain work, and that he will proceed immediately to start with his preparations for the performance of that work, and that letter provides a formal contract will be entered into as soon as the data and information are sufficiently accumulated to do so.

Q. The formal contract was entered into later?

A. Yes, sir. [111]

The Court: November 6, did you say?

A. November 6, 1943. They were operating under a contract in the meantime, but it was a letter contract.

Q. (Mr. Erickson resuming): Now the contract between the E. I. du Pont de Nemours Company and the Olympic Commissary Company was entered into at what time, Colonel—on what date?

A. March 25, 1943.

Q. Now directing your attention to the original contract between the United States Government and the E. I. du Pont de Nemours Company, what provision is made in that contract about property

(Testimony of Lt. Col. Ralph G. Cornell.)

used in the prosecution of the work on the Hanford Engineer Works?

Mr. Sandvig: I object to that as not being the best evidence. The witness has the contract before him. They have opened the doors now, and the contract is no doubt admissible. He has been using it for evidence, and certainly the contract is the best evidence. No matter how good a lawyer he may be, we might disagree on its interpretation. The contract itself is the best evidence.

The Court: The objection is overruled.

Mr. Sandvig: The last time I was accused of not objecting to something, but I want this objection to go to all this testimony. I thought I was objecting until I was getting to be a pest. May it be understood my objection [112] goes to all this testimony?

The Court: The objections you made during the previous testimony go to all the testimony relating to the contract, and your objection that it is not the best evidence is overruled, for the reasons I stated in my opinion. You do not need to object, if you can resist the temptation to do so, and you may desist from making the objection. Go ahead.

A. I do not know that I understand your question.

Q. What provision does the contract contain about the title to the property, the personal property, machinery and equipment, and all things used by the du Pont company in the prosecution of the work on the Hanford Engineer Works?

(Testimony of Lt. Col. Ralph G. Cornell.)

A. Under the du Pont contract the Government either furnishes or reimburses the du Pont——

Mr. Sandvig: I did not get that.

The Court: Either furnishes or reimburses du Pont.

A. —for all property, materials and supplies of whatever nature purchased or furnished for the performance of the work, with the exception of certain equipment that du Pont is authorized to furnish, for which they are reimbursed on a rental basis.

Q. Do you know what equipment the du Pont company furnishes for which it is to be reimbursed on a rental basis?

A. I do not know exactly what property they furnish. It was [113] contemplated that they might furnish certain processing equipment, and possibly some construction equipment. How much they actually furnished I do not know.

Q. What provision does the contract contain about the title to the personal property that is used on the job by the du Pont company?

A. The contract provides that all property, supplies and materials which are purchased by du Pont, and for which they are reimbursed under the contract, will vest in the United States upon its delivery at the site of the work, or such other place as the contracting officer may direct.

Mr. Sandvig: In other words, it is the property of the du Pont company until such time as it is delivered?

(Testimony of Lt. Col. Ralph G. Cornell.)

A. I suppose it would be technically.

Q. (Mr. Erickson resuming): How are purchases made by the du Pont company and paid for by the United States. Will you explain that?

A. How they are made?

Q. Yes. Explain what the contract provides in that regard.

A. The contract provides that du Pont will make all purchases and do all procuring under the regulations of the War Department, which require some competition, and the du Pont company will place its own orders for the purchase, and that the materials will be delivered at such and such a place. After they are delivered the materials are [114] paid for by du Pont from a fund which has been furnished to du Pont by the Government.

The Court: A revolving fund?

A. A revolving fund. The contract provides that all this work will be done without any expense or cost or liability of any nature, shape or form to the du Pont people, and with the understanding and agreement that all monies required in financing the project will be furnished in advance by the Government. These monies are furnished by the Government to du Pont. They are placed in a special fund, which we call a revolving fund, and all vouchers which are payable by du Pont are paid from this fund. Likewise under the contract du Pont is required to make all collections of all monies due the Government in the operation of the project, and those monies when collected are re-

(Testimony of Lt. Col. Ralph G. Cornell.)

quired to be put in this fund. That is why it is called a revolving fund. The Government puts in the money to make it current, and the du Pont company collects money and puts it in the fund, and that goes on.

Q. What does the contract provide about additions to the fund if the fund should run short?

A. After the fund reaches a certain level the Government makes du Pont another advance, and that is deposited in the revolving fund.

Q. Does the contract provide that the du Pont company shall [115] advance any of its own money, or arrange for any money from any other source than the Government in the project of the Hanford Engineer Works? A. Not at all.

Q. What does the original contract provide with reference to subcontracts, such as the contract with the Olympic Commissary Company?

A. It provides that du Pont will furnish all facilities for the project, including commissary mess halls, hospitals, and various other facilities, and it provides with the consent of the contracting officer du Pont may secure the services of any third person for the performance of any part of its functions, which would include the operation of mess halls, dormitories, cafeterias, and so forth.

Q. Now what does the contract provide between the du Pont company and the Olympic Commissary Company about the furnishing of food to the workers on the project?

(Testimony of Lt. Col. Ralph G. Cornell.)

Mr. Sandvig: I want to make a special objection on that. You are now referring to the Olympic Commissary Company's contract with the du Pont company?

Mr. Erickson: Yes.

Mr. Sandvig: I object to that as being hearsay and a conclusion of the witness, and that the Olympic Commissary Company's contract would be the best evidence. The witness himself has testified it is a restricted [116] contract, and it is available to all the employees of the United States. I suppose it has even been shown to counsel for the Government.

Mr. Erickson: No; it has not been shown to counsel for the Government. I can state that.

Mr. Sandvig: I am not curious to read the contract, but this is merely a restricted contract. Certainly the Court should have it available to him to read and study. Otherwise we will convict this man on the conclusions of this witness.

The Court: In the light of the Colonel's statement that the restricted contract would be open for me to examine, subject to the restriction that if I did examine it my comment on it would be limited exclusively to the conclusions I draw from it, and not make a statement of fact of what it contains, I think the objection is well taken, unless the witness states he feels it would be impossible to permit me to examine it. I have no desire to examine it particularly.

(Testimony of Lt. Col. Ralph G. Cornell.)

Q. Can you leave the contract, or do you have to take it with you?

The Court: If I examined it, I would take the time right now.

Q. If you have any objection to the Court examining it, you may say so, Colonel. [117]

A. I think it comes within my authority to permit the Court to examine the contract, and I am perfectly willing to do so.

The Court: The Olympic contract?

A. Yes, sir.

Q. (Mr. Erickson): How long a contract is that?

A. Or I think I can quote any paragraph out of the contract that relates to the matter you want to get information on.

Q. Probably it would aid the Court if you would mark those paragraphs which are applicable, and let the Court read the contract.

A. It is not a very lengthy contract.

The Court: You may go ahead, with the understanding when you get through I will examine the whole contract, with the purpose of seeing whether or not there is anything else in the contract which would negative the conclusions you draw from the contract, or the quotations you give from the contract. With that understanding I shall overrule the objection.

Q. You may answer.

A. The contract provides that the Olympic Commissary Company will perform the service of

(Testimony of Lt. Col. Ralph G. Cornell.)

procuring food and operating the mess halls, which was required of the du Pont company under their contract, and the contract provides for the same procedure in purchasing and inspection and payments. [118]

The Court: As between the du Pont company, and the——

A. And the United States.

The Court: How does the Commissary company get into this revolving fund? Does the du Pont company set up a revolving fund for the Commissary company?

A. The Commissary company's contract provides the Commissary company will furnish all personnel necessary to operate these mess halls, and they will do all the procuring of supplies in the purchase and serving of food. It provides the du Pont company may furnish to the Olympic Commissary Company——

Mr. Sandvig: May furnish?

A. Yes; may furnish an advance of funds similar to that which the Government advances to the du Pont company, from which it will make payments of all costs of procuring food, and its operation. I understand that the contract required the furnishing by the Olympic Commissary Company of a bond, satisfactory to the du Pont company, to cover the use of this fund, and I am informed they never did furnish a bond satisfactory to du Pont, and that as a matter of prac-

(Testimony of Lt. Col. Ralph G. Cornell.)

tice they made a purchase of food or materials, supplies, and so forth, and submitted their voucher for reimbursement, and from that paid their various suppliers. That is my understanding of how it was done. The contract itself did not contemplate the [119] Olympic Commissary Company would use any of their funds in the performance of their work. The contract itself is in the nature of a contract for services. They were to furnish the personnel and the experts and people to run the commissary, and the Government paid all costs of running it.

Q. What provision was made in that contract about the title of the food that was purchased for use in the mess halls?

A. It is the same paragraph that appears in the du Pont contract. I would be very glad to read that.

Q. Do you think you can read that paragraph?

A. Yes, sir.

Q. Will you read it?

A. "Title to all materials, tools, machinery, equipment and supplies furnished by the subcontractor hereunder, for which the subcontractor shall be entitled to reimbursement under Article 2—" Article 2 has to do with reimbursement of cost—"shall vest in the Government on delivery at the plant or at such point or points as the contracting officer may designate, on approval in writing, provided, that the right of final inspection and acceptance or rejection of such materials, tools,

(Testimony of Lt. Col. Ralph G. Cornell.)

machinery, equipment and supplies, at such place or places as he may designate in writing, is reserved to du Pont."

Mr. Sandvig: Will you read that last again?

A. About inspection?

Mr. Sandvig: Yes.

A. "Provided, that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment and supplies, at such place or places as he may designate in writing, is reserved to du Pont. Provided, further, that upon such final inspection the subcontractor shall be given notice of acceptance or rejection, as the case may be. In the case of rejection the subcontractor shall be subject to removal of rejected property within a reasonable time." That is the standard provision of all contracts of this nature.

Q. What provision is made in the contract about the payment of labor used in the mess halls?

A. The contract provides the Olympic Commissary Company shall be reimbursed by du Pont for all labor, the purchase of all materials and the purchase of all equipment that may be necessary to run the mess halls, with the exception of certain equipment which the Olympic Commissary Company were themselves to furnish, and in connection with this they were paid a rental of so much a month by du Pont for the use of them.

Q. What provision does the contract make in the Olympic Commissary contract about the sale of meal tickets?

(Testimony of Lt. Col. Ralph G. Cornell.)

A. The contract does not itself go into the details of how [121] the Olympic Commissary Company are to operate the mess halls. It does provide, however, that they will make collection of all monies received or due the Government, and the pertinent paragraph on that reads as follows: "The subcontractor shall pay to du Pont weekly for the account of the Government all sums received by the subcontractor from the operation of the facilities." And of course when du Pont receives that it goes into the revolving fund the same as the collections made by du Pont itself.

Q. What are the provisions of the Olympic Commissary Company contract regarding any income the Olympic Commissary Company receives, as to which fund it shall go into.

A. The contract provides that all funds collected by them shall be turned over to du Pont and accounted for as Government funds. That includes the collections of any kind, shape or form, they make.

Mr. Sandvig: Is there anything dealing with that that you could read? Can you read that paragraph?

A. The paragraph that covers it is the paragraph I just read a few minutes ago.

Mr. Erickson: You may examine.

A. It goes into somewhat of details. It requires them to take advantage of all trade discounts, rebates, salvages, commissions, bonifactions, and it goes into elaborate [122] detail to show that the

(Testimony of Lt. Col. Ralph G. Cornell.)

Olympic Commissary Company must take advantage of every credit that the Government is entitled to, and account for that to du Pont for deposit in the Government revolving fund.

Mr. Erickson: One more question.

Q. Under the Olympic Commissary contract what provision is made in that contract about title to food that is purchased by the Olympic Commissary Company?

A. I read that paragraph a moment ago.

Q. Is there any other clause in the Olympic Commissary contract that would alter the effect of that clause in any way? A. No.

Mr. Erickson: That is all. You may examine.

Cross Examination

By Mr. Sandvig:

Q. What classification do you say the du Pont contract is in? A. That is secret.

Q. And the other one is restricted?

A. Yes, sir. I would be very glad to show you the title page of it.

Q. I would like to have you open the door so I could look at all of it.

The Court: Let me see the title page. I am [123] familiar with Judge Patterson's signature. I know him.

A. That (indicating) is the title page, and that is the classification, and that is the approval Judge Patterson gave it, and this is the approval of the Chief of Engineers, and over at the end of it——

The Court: Where is the secret part of it?

(Testimony of Lt. Col. Ralph G. Cornell.)

A. Here (indicating) it is marked "Secret". Each page is marked "Secret".

The Court: I can testify that that is Judge Patterson's signature.

A. At the end of it, and I would be very glad to show you the execution of it.

Mr. Sandvig: Yes. It is a duplicate original?

A. Yes, sir. I am very glad to show you anything I can, without being court martialed.

Mr. Sandvig: I will not ask you to do that.

Q. (Mr. Sandvig): The other one is merely a restricted contract, available to any employee of the United States?

A. That is right.

Q. There would be an objection to me seeing that?

A. In its entirety. I would be very glad to show you any of the administrative portions, relating to this particular thing.

Q. It would be hard for me to get at it, but you will let the Court take it to his chambers? [124]

A. Yes, sir.

Q. Now, as I get it, there is a fund set up to reimburse the du Pont company from the Government?

A. That is right.

Q. But there is no fund set up by the Government to reimburse the Olympic Commissary Company?

A. There is a provision in the contract for such a fund to be advanced by du Pont from their revolving fund to the Olympic Commissary Company,

(Testimony of Lt. Col. Ralph G. Cornell.)

under which it operates the same as the du Pont company does.

Q. The Olympic company gets its compensation by way of rent?

A. They get their compensation by a lump-sum payment of so much a month for their services.

Q. If they go down and buy a sack of sugar the du Pont company owns that sack of sugar until there is an adjustment made?

A. I would say under the contract the moment it is delivered at the site of the work the title passes to the United States, regardless of whether the purchase is made by an employee of the Olympic Commissary Company or the du Pont company.

Q. Is there any paragraph of that Olympic Commissary Company contract that you could read as to that?

A. Yes; I can read that, if you would like to hear it.

Q. Yes.

A. That is a standard form of paragraph that is in all con- [125] tracts, and therefore I would consider it proper to read it: "Title to all materials, tools, machinery, equipment and supplies used in the construction or operation of the plant for which the contractor shall be entitled to reimbursement under Article 12, is vested in the Government at the plant or at such point or points as the contracting officer may designate in writing, provided the right of final acceptance or rejection of such materials, tools, machinery, equipment and supplies, at such place

(Testimony of Lt. Col. Ralph G. Cornell.)

or places as he may designate in writing, is reserved to the contracting officer. Provided, further, that upon such final inspection the contractor shall be given written notice of acceptance or rejection as the case may be. In the event of rejection the contractor shall be responsible for the removal of rejected property within a reasonable time."

Q. Do you know the policy there as to the—it says "must be accepted by written notice." What about the Olympic Commissary Company, is there a written notice of acceptance of that—in other words, title passes to the Government upon acceptance, as I understand that contract, written acceptance?

A. In cases where the Government makes a final inspection at the point of delivery the contract provides that form of notice. [126]

Q. Written notice of acceptance?

A. How soon it is given I do not know.

Q. If it was rejected it would be the property of the Olympic Commissary Company?

A. Either that or title would revert back from the Government. I do not know which way you would construe it. That is getting rather technical.

Q. That is what I was afraid of in the interpretation of those contracts. Is there any provision about meal tickets in that contract?

A. No, sir. The contract does not go into detail as to how the Olympic Commissary Company shall operate.

(Testimony of Lt. Col. Ralph G. Cornell.)

Q. The reading of the terms of the contract in the case of the Olympic Commissary Company accepting some forged meal tickets they could not be reimbursed for that, could they?

A. I do not understand the question, I guess.

Q. The Olympic Commissary Company gives out meal tickets. I forge them and pass them, the Government would not have to stand that?

A. If you forged a meal ticket, it would seem to me if you sold it and received money for it, you are in possession of money which is accountable to the Government.

Q. In other words, they accept one of the tickets I gave them—it is forged—would the Government reimburse them for accepting the forged meal ticket? [127]

A. They certainly would not do it if they knew it was forged.

Q. I forge the ticket and get meals on it, and the Government subsequently finds out it is forged, would they reimburse the Olympic Commissary Company for accepting the forged ticket?

A. They could. It would be within the discretion of the contracting officer. If he felt convinced the Olympic Commissary Company acted in good faith, it would be within his discretion, I think.

Q. Is there anything in the contract with respect to that?

A. No, sir. I base that on general government policy in the performance of contracts.

(Testimony of Lt. Col. Ralph G. Cornell.)

Q. The Government would not have to reimburse the Olympic Commissary Company if they accepted a bunch of forged tickets?

A. I do not think they would have to, but I think under the general practice they would, if they found the Olympic Commissary Company acted in good faith, and could not have known of the fact.

Q. But they would not be required to do it, would they?

A. I do not think so. Of course, that is purely my opinion. If they refused to pay it, and it was taken to court, I do not know how the court would rule. I do not know of any comparative case.

Q. I think that is all. Are you going to be here? I may [128] think of something else.

A. Yes, sir; I can stay here as long as you would like to have me. I will be here for some time.

Redirect Examination

By Mr. Erickson:

Q. If a meal ticket on the Olympic Commissary Company were forged, and the Olympic Commissary Company supplied the meals to the person who forged that ticket, who would lose on that transaction—whom would the loss fall upon ultimately.

A. You mean instead of selling it for money?

Q. Suppose a workman would print the ticket himself, whom would that loss fall upon ultimately?

A. Under the procedure under which we make payments to contractors generally—

Mr. Sandvig: What does the contract provide?

(Testimony of Lt. Col. Ralph G. Cornell.)

A. The contract does not provide anything on that point, because the contract does not mention the use of meal tickets, but I would say whether the loss fell on the du Pont company or the Government would depend on whether du Pont could reasonably be considered as having knowledge, or should have had knowledge, the tickets were counterfeited.

The Court: It is just a straight question of agency. If the Colonel's interpretation of this contract is correct, that du Pont is the agent of the Government, and [129] in turn the Olympic Commissary Company is the agent of the Government, the question of the liability of the agent is one depending upon whether or not he has so conducted himself in carrying out the obligations which the agency imposed upon him that he has met those obligations in a proper manner. If he was careless then he would be liable. If he was not careless he would not be liable.

The Witness: That is right.

The Court: When I was seventeen years old I was a hotel clerk, and I cashed a check for \$5.00. I did not think I was careless, and I felt that I was justified in cashing the check, but the hotel said I had to pay the \$5.00, and I have never forgiven them since that time, but I had the matter called to my attention at the age of seventeen years. I have fretted about that \$5.00 ever since, and this is the same proposition.

(Testimony of Lt. Col. Ralph G. Cornell.)

Recross Examination

By Mr. Sandvig:

Q. As I get it then, the Olympic Commissary Company is merely reimbursed, and paid a rental valuation for the use of some of their equipment, and they are reimbursed—strictly a question of reimbursement. In other words, they operate the business, and own the property, except they are reimbursed?

A. They do not own any property, except the property they [130] furnish and are paid a rental for. At the time any other property gets into the commissary——

Q. Is the Olympic Commissary Company a private corporation?

A. I will see. This (indicating) says it is a contract between du Pont and the Olympic Commissary Company," a corporation organized and existing under the laws of the state of Illinois, with its principal offices at Chicago, Illinois, hereinafter called the sub-contractor."

Q. Have you read the articles of incorporation?

A. No, sir; I have not.

Q. You don't know whether they have authority to enter into such a contract as this or not?

A. No, sir.

The Court: Any further questions?

Mr. Erickson: That is all.

Mr. Sandvig: That is all.

(Witness excused.) [131]

CAPT. MORTON K. BARRETT,

called as a witness by the Plaintiff, first duly sworn,
testified as follows:

Direct Examination

By Mr. Erickson:

Q. State your name, please.

A. Morton K. Barrett.

Q. You are a Captain in the United States
Army?

A. The reason I pause is that I do not know how
technically correct I would have to be. I am a
Captain in the Army of the United States. It is a
technical question.

Q. Where are you stationed?

A. At Hanford.

Q. What are your duties there?

A. Chief Project Auditor.

Q. What are your qualifications for that job,
Captain?

A. I have a Bachelor's Degree in accounting,
and I have had considerable graduate work in ac-
counting, a year of teaching collegiate accounting,
three years with one of the largest accounting firms
in the country, and four years on active duty in the
auditing of fixed-fee reimbursement work, the last
two years at Hanford.

The Court: What was the accounting firm?

A. Arthur Anderson & Company.

Q. (Mr. Erickson): Are you acquainted with
the construction on the project at the Hanford En-
gineer Works? [132]

(Testimony of Capt. Morton K. Barrett.)

A. You mean the physical construction, what is going on?

Q. Yes. Roughly speaking, who is in charge of the construction, and so forth?

A. Yes, sir. I know that.

Q. What equipment did the E. I. du Pont de Nemours Company furnish on that job?

A. I presume you refer to that equipment which they may have furnished on rental?

Q. Yes. What equipment did they furnish on rental, and what equipment was furnished by the Government, just roughly, if you know?

A. The du Pont company furnished no equipment. The Government furnished a considerable amount of government-owned equipment. Some was leased from third parties, the leases being between the du Pont company and the third parties, the rentals being reimbursable. That equipment leased for construction work was construction equipment, such as bulldozers, caterpillar tractors, drag lines and shovels.

Q. There were no consumer goods like clothing or food?

A. That was leased from third parties?

Q. Yes.

A. No; none of that type of thing was leased.

Q. What equipment did the Olympic Commissary Company furnish when they went in down there as subcontractor?

A. They furnished a small amount, or a small percentage, of a [133] great variety of items. When

(Testimony of Capt. Morton K. Barrett.)

I say small percentage, let us say we needed 10,000 sheets for the barracks, perhaps the Olympic Commissary Company had 500 on hand, and they sent those in, and the Olympic Commissary Company bought the others as a reimbursable item, and as I understand the title went to the Government of the balance of the sheets they purchased.

Q. Did the Government rent the property the Olympic Commissary Company used?

A. Yes, sir. May I go into a little explanation? This type of contract provides generally for the renting of equipment from the contractor, and included in the Olympic Commissary contract there was a stipulation they will furnish such and such equipment, and there is also included in it that they are paid for the rental of that equipment.

Mr. Sandvig: To keep the record straight, I want to object to this testimony.

The Court: I will sustain the objection, and strike all this last answer.

Q. Now, Captain, how was this equipment procured as to the Olympic Commissary Company? Tell how it was procured.

Mr. Sandvig: The same objection.

Mr. Erickson: I submit he can answer that. He is an accountant.

The Court: I will overrule the objection. [134]

A. Which equipment?

Q. The equipment the Olympic Commissary Company used on the operation down there. How was it secured?

(Testimony of Capt. Morton K. Barrett.)

A. There was that which was supplied by the Olympic Commissary Company. They brought it in from outside, and that was rented from the Olympic Commissary Company, and, second, the portion that was procured other than that. It came in in three different ways. Some of it was Government-owned, and——

Mr. Sandvig: I want to object to that. The Court will understand my objection goes to all this.

The Court: I will sustain the objection, when he says it is government-owned. He can say the Government brought it there, as compared with the Olympic Commissary Company bringing it there.

A. The Government brought in some from other army posts operated by the Government. Second, some of it was procured by the Olympic Commissary Company on their own purchase orders, for which they paid their own checks, and were reimbursed by the Government, and lastly in some instances the du Pont company followed the same procedure and brought equipment in.

Q. How about the food?

A. The food was all handled by the issuance of Olympic purchase orders and receiving invoices by the Olympic Com- [135] missary Company, and the issuance of checks by the Olympic Commissary Company, and reimbursement by the Government.

Mr. Sandvig: The same objection.

Q. How was payment made? Trace the mechanics of payment for the food.

(Testimony of Capt. Morton K. Barrett.)

A. First the Olympic Commissary Company would ascertain the need of some particular item of food. If that requirement exceeded \$2,000.00 they requested permission of our office to make that procurement. If the particular procurement was under \$2,000.00 that advance or prior approval was not necessary. However, after obtaining approval on a larger procurement from our office, the Olympic Commissary Company would contact the vendor and issue a purchase order.

Mr. Sandvig: It doesn't make any difference what their procedure was. They may have done everything wrong, but what is material is what the terms and conditions were under this contract. Supposing they wanted to pay for anything and everything.

The Court: As far as I am concerned, you are right; but if the Government wants to make a record they may do it. I do not think it is material. The Colonel testified the Government entered into a contract with du Pont, in which it employed du Pont for the service that it would render, and in that contract the Government authorized the [136] du Pont company to sublet a portion of that contract, and in conformity with that provision of the contract between the Government and the du Pont company, the du Pont company did sublet a portion of the contract to the Olympic Commissary Company. This is not a charge of receiving food from the Government. It is a charge of attempting to defraud the Government. The testimony

(Testimony of Capt. Morton K. Barrett.)

went in in the previous hearing, and I did not think at that time, standing alone, it would be sufficient, and I do not see that it has any value. If there was a jury here I would not let you put it in. I will not pay any attention to it. If you want to put it in, over the objection, you may do so. I think you have it already in the record.

Mr. Erickson: Yes, in thinking back over Mr. Riggin's testimony, I think it is in, and I will withdraw the question. That is all the questions I have.

Mr. Sandvig: I have no cross examination.

(Witness excused.)

Mr. Erickson: We will rest.

The Court: I will take a little time now to look over the contract.

(After a short recess the trial was resumed as follows, to-wit:)

The Court: Will you come forward again, Colonel? [137]

LT. COL. RALPH C. CORNELL,

recalled as a witness for the Plaintiff, further testified as follows:

The Court: I will state that I have examined the contract which Col. Cornell has handed me, which he has described as a subcontract between the du Pont company and the Olympic Commissary Company. I find nothing in it which would in any way negative the testimony of Col. Cornell as to the

(Testimony of Lt. Col. Ralph C. Cornell.)

construction of the contract. There are three matters in the contract which I would like to call to the attention of the witness, concerning which, if he wishes, he can testify. That is Article 5, Article 14, and the signature on the bottom of page 17 (handing contract to witness).

Witness: Article 5 is the standard form of article which goes into all government contracts. I had better take a look at this to see if it has been altered or changed any. That is the standard form that goes into all time government contracts. As a matter of fact, it should not have been included in this contract. We do not include it usually in sub-contracts. For your information, do you want something about the purpose of it, or the operation of it?

The Court: No. Have you any objection to discussing it here?

Witness: No, sir.

The Court: It seems to me it gave to the Undersecretary the power to decide disputes. [138]

Witness: That is right.

The Court: What does it provide in reference to disputes?

Witness: It provides in the event the contractor and the contracting officer cannot agree upon some dispute which arises under the contract, such as whether or not the contractor is entitled to a greater payment than the contracting officer thinks the contractor should have, or whether the contractor thinks that some work is not within the scope of the contract, or any other such dispute that they

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(Testimony of Lt. Col. Ralph C. Cornell.)

cannot agree upon, it may be appealed by the contractor, within a stated time, to the Secretary of War, and the Secretary of War has created a Contract Appeals Board, before which the contractor can appear and state his case and set forth his claim, if it is based upon a disputed question of fact, and the Secretary of War can make a decision, which as to the facts of the dispute is final and conclusive.

The Court: As to 14?

Witness: I might say I do not know why this article was included in this contract, but it is not customary to put it in the subcontract. In that kind of a contract we usually put in a provision that if the contractor and the subcontractor cannot agree, the dispute shall be [139] referred to the contracting officer, and his decision shall be final. Article 14 is a paragraph on renegotiation. That again is a standard form of paragraph, which is included in all government contracts and subcontracts, and which makes it subject to renegotiation by the Secretary of War or by any agency he sets up to determine whether the contractor has made an abnormal profit or an excessive profit in the handling of the war contract. In other words, that would mean that this contractor could be required to come in and appear before a renegotiation board, set up by the Secretary of War, and submit all financial data relative to the corporation, such as the amount of capital stock, the amount of money received generally from noncontract business, and the amount

(Testimony of Lt. Col. Ralph C. Cornell.)

of money received from the contract business, and a financial statement to show the actual cost on the government business, and the profit, and they determine whether the contractor received an unconscionable profit, and, if so, under the law the contractor is required to refund a certain amount of it back to the Government. The other one is——

The Court: At the bottom of page 17.

Witness: “To be executed by the contracting officer who executed the principal contract named herein, or his successor or his duly authorized representative.” [140]

The Court: I am referring to the approval.

Witness: Yes, sir. The approval is required of the contracting officer in all subcontracts, and this is in the same category. Under the terms of those contracts they have to be approved by the contracting officer who signed the original contract, which was the District Engineer here, or by his successor, if he has been replaced, or by his authorized representative. In view of the fact that the District Engineer is situated a long distance from here, he has designated Col. F. T. Mathias as his duly authorized representative to handle matters of this kind here, and to act for him in all other matters relating to the performance of these contracts.

The Court: Did he approve it?

Witness: Col. Mathias approved this contract, but he did not approve it until after he had submitted it to the District Engineer, and the District

(Testimony of Lt. Col. Ralph C. Cornell.)

Engineer referred it to the legal staff for review, and its recommendation, and then it was sent back to Col. Mathias, and this is his signature.

The Court: That is all I have.

(Witness excused)

Mr. Sandvig: We rest.

Mr. Erickson: That is all.

The Court: Do you want to argue this question again? [141]

Mr. Sandvig: Yes.

The Court: One-thirty.

(A recess was then had to the hour of 1:30 p. m., of said day, at which time, all parties being present as heretofore, Mr. Sandvig presented argument on behalf of the defendant to the Court, and the Court thereupon rendered the following Oral Decision, to-wit)

ORAL DECISION BY THE COURT:

The Court: I am in full accord with Mr. Sandvig's statement that this case is unique. It is unique in practically all of its phases, and because it is unique, and several questions have arisen which are practically questions of first impression, so far as any court is concerned, without in any way indicating any doubt in my own mind as to the correctness of the conclusions I have reached, I will say that I hope the defendant is able and willing to prosecute an appeal in this case, and if he does I will fix the bond in an amount which

will enable him to appeal and remain at liberty. I do not think a \$500.00 bond is sufficient. I will fix it at \$1,000.00.

Mr. Sandvig: It was \$200.00, and he is here on a \$100.00 bond.

The Court: Well, I would fix the bond at \$1,000.00, [142] in the event he wants to appeal.

Now the case was presented first, as I remember it, and we tried it the evening of October 5th, if that is the correct date, last year.

The Government proved, and the defendant has not attempted to deny the fact, that he did cause to be printed a large number of fictitious commissary tickets, which were in such manner and form as to force one to reach the conclusion that the securing of the printing of them and the distribution of them was with the belief or the hope that they sufficiently resembled the genuine commissary tickets that they could be passed and used with the Olympic Commissary Company.

The defendant has not attempted to contest that, and I think he is entitled to some credit for the fact he has not taken the stand and perjured himself about it.

At the first hearing that testimony was submitted, that stage of the case was proved overwhelmingly. The difficulty at the first hearing arose from the inability of the Government to prove its allegation that the Olympic Commissary Company was an agent of the United States. The reasons behind that difficulty and my conclusions concerning it are

outlined in the opinion which I wrote on December 22d, last year. Counsel has kindly referred to it as being a very good statement. I appreciate [143] that. Whether it is good and sufficient or not, at least it was the best I could do. I do not intend to add to it now.

I held then that it was doubtful whether the Government in a case of this kind could make use of secondary evidence to prove the relationship between the Olympic Commissary Company and the United States. I held that they had not submitted the best secondary evidence that was available to them, and, therefore, I held, as the case stood at that time, that the case must be dismissed, That did not constitute a dismissal.

It is true that it is a new question, as is the right of the Government to offer such secondary evidence, but it seems to me the logic of the situation requires that I reach the conclusion that the Government is entitled to reopen its case, and present its best evidence, if it is required to do so.

A dismissal of a criminal action comes as the result of an order of dismissal, either a written order or a direction to the Clerk, with which the Clerk complies, to make a minute entry in the record of the court. Nothing of that kind was done. I wrote an opinion.

In civil cases it is true the appellate court has held an appeal cannot be taken from an opinion. They have held that opinions are not binding on the Court in [144] making findings of fact in civil cases.

The jury returns a verdict of not guilty. That does not release the defendant. I have to sit here and say that the defendant is released and his bond discharged, or he is released from custody, and the Clerk makes an entry of that order.

In some more formal cases it might be deemed advisable for me to sign an order, after the jury has returned a verdict. At least there must be some action on the Court's part, and so that here when I said it must be dismissed, it seems to me in the logic of the situation I would construe that order of dismissal on the facts as I outlined them at the time I wrote the opinion would have to be entered.

Before it was entered by a formal written order or by an entry by the Clerk, the Government made a motion to reopen the case to put in further evidence. That motion was a proper one. I gave considerable study to the question at the time. Frankly it is not available as an authority which completely answers the question, but there are authorities which may be used for the purpose of analogy, and it seems just plain logic requires that conclusion.

So now we have the testimony of a witness who has seen the original contract, who has had long experience [145] as a lawyer and a specialized experience in the art of drawing and construing contracts. We have his oral testimony, which in my opinion I held was admissible.

Under that testimony I believe that the Govern-

ment has proved that the Olympic Commissary Company was an agency of the United States. Agencies of the United States are necessarily limited in their power to bind the United States. I doubt whether the United States Government can enter into a general agency agreement and give to any individual or corporation the same broad powers as an agent which an individual can, but the courts have recognized for a long time it is possible for the Government to establish individuals or corporations as its agent.

Here we have an agency agreement with the du Pont company, which gave to the du Pont company the right, subject to strict supervision and control, and to the further restriction of approval, before such subagency could be created.

Under this contract a revolving fund was set up. I do not think even the du Pont company or the Olympic Commissary Company would have the broad power of agency under the du Pont contract, as has been explained to us by the witness, or the Olympic Commissary Company contract, to bind the United States Government for every- [146] thing that they might try to do. They certainly have the power to bind the Government in so far as the operation of this business is concerned, and in so far as the funds which were established by the United States for this business by the original contract and the subcontract are concerned.

Suppose I worked at the Olympic Commissary as a cook, and I did not get paid, I certainly would be entitled to start a suit and subject that fund

to the obligation of payment, if the fund was in existence at that time.

The witness has explained about the contract. It is clear that the Olympic Commissary Company received compensation in the form of a fee. It was simply employed at a salary to operate this commissary business, and its salary was paid—not directly but indirectly—by the United States Government. The Government had the right to control it, and had the right to settle disputes between the Commissary company and the du Pont company. It had the right to renegotiate the contract, if it felt that the compensation received by the Olympic Commissary Company was unconscionable. It was subject at all times to the direction and control of the representatives of the Army Engineers, so it contained in its limited scope all the elements of agency. [147]

That brings us to the next question, whether or not there was any intent upon the defendant's part to defraud an agency of the United States.

Every individual is presumed to know the consequences of his acts, and to intend to do those things which he does do. There can be no doubt under the testimony here that when this defendant had these commissary tickets printed in the form they were, and made the use of them he did, that he intended to defraud somebody. He had the intent to defraud.

It is equally clear he had the intention of defrauding the Olympic Commissary Company. Now that is the intent which is necessary. It is not

necessary for him to know that the Olympic Commissary Company was an agency of the United States. The Olympic Commissary Company just happened to be an agency of the United States, and he intended to defraud this concern, which at that time and under those circumstances was an agency of the United States. It seems to me clear he did it with the intent, the clear intent, to defraud this agency of the United States, and as a result of his acts he did defraud, to the extent that the tickets were passed, and he was defrauding the United States.

And so I will find the defendant guilty as charged in the indictment as to each of the three counts.

Mr. Sandvig: Do you want to pass sentence now?

The Court: Yes.

Mr. Sandvig: Your Honor, you have seen fit to find the defendant guilty. I have never known the defendant except in connection with this case. They lived—I guess he was born on the Coast, in the State of Washington. He has never been in trouble at all before. He never has been convicted of anything, and has always conducted himself as a reputable citizen. Whatever he may have done in connection with printing the tickets, I have nothing to say about that. That was wrong. There is no question about that.

The Court: You make that statement, that he has never done anything wrong. Do you want to ask for a presentence investigation in this case?

Mr. Sandvig: Not particularly, because Your Honor——

The Court: Well——

Mr. Sandvig: He never has been convicted.

The Court: But assume you believe that, and assuming it is true, are you asking for probation in this case?

Mr. Sandvig: I would like to get probation. I would like to get it. The very least we can get. He never was in any other trouble, and when he got those tickets, Your Honor will remember it came up in the testimony they arrested him—he was going to join the army then. Whatever bad intention he had formed, he was going into the army. [149]

The Court: I do not want to indicate anything, but if a man never has been convicted of a crime, if he wants a presentence investigation he is entitled to it from the Court. I do not say I will consider probation, but if you want to make an argument for probation, you may do so.

Mr. Sandvig: I would ask for it.

The Court: He is entitled to that as a matter of right. It is not in the statute, but I will give him that right. If you want to ask for that, I will put the matter over for sentence until the next time I come back, which will be on the afternoon of May——

Mr. Sandvig: Are you going back to Montana?

Defendant: Yes.

Mr. Sandvig: You can come back.

The Court: He will have to come back or he

will not go. I will fix it now, and it will be at 2:00 o'clock in the afternoon of May 1; but in the meantime——

Mr. Sandvig: He is still on his original bond.

The Court: Mr. Kurz is here, and you can see him, and you will have to give him a complete statement about your wife and family, and all about yourself, and he will check up on it, and he will give me a complete report on you.

Defendant: Can we do that now?

The Court: Yes. He is out in the hall.

(No further proceedings had.) [150]

[Title of District Court and Cause.]

CERTIFICATE OF TRIAL JUDGE

The above and foregoing cause was tried before the undersigned Lewis B. Schwellenbach, Judge of the United States District Court for the Eastern District of Washington; within thirty (30) days after the date of the judgment, the time for filing, settling, and procuring to be settled and signed the bill of exceptions in said cause was by me extended to June 18, 1945, upon which date the bill of exceptions was served and filed in said cause.

Now, Therefore, I, the Trial Judge aforesaid, do hereby sign, settle, and certify the above and foregoing proposed bill of exceptions filed herein as the bill of exceptions in said cause.

Dated this 25th day of June, 1945.

L. B. SCHWELLENBACH

United States District Judge

Approved and notice waived:

EDWARD M. CONNELLY

United States District Attorney and Attorney for
Plaintiff

Copy of within Record received this 18th day of
June 1945 and due service thereof acknowledged
on said date.

EDWARD M. CONNELLY

U. S. Atty.

HARVEY ERICKSON

Asst. U. S. Attorney,
Attorneys for Appellee.

[Endorsed]: Filed Jun. 25, 1945.

PLAINTIFF'S EXHIBIT "A"

	60	60	60	60	60	60	60	
10	Olympic Commissionery Co.					No. 321350 A		50
10	MEN'S MEAL TICKET							50
10	Good Only at Mess Hall No. 7							50
10	\$12.60 Plus Tax							50
40	Name: RICHARD HAUGEN							50
40	Badge No.: 10-8410					Date: 3-14		50
	60	60	60	60	60	60	60	

[Clerk's Note: The figures with line through them indicate punch out on original ticket.]

PLAINTIFF'S EXHIBIT "A-1"

10-8410	B
Name HAUGEN	Badge No.
MEAL TICKET WAGE DEDUCTION AUTHORIZATION (For Mess Hall No. 7)	
319491	
No. 32135	A 3/14
I hereby acknowledge receipt of meal ticket issued to me by the Olympic Commissary Company, and in consideration of this ticket I hereby authorize my employer to deduct \$12.98 from wages to be earned by me to cover the cost of meals afforded through the use of this ticket.	
R M	R. R. HAUGEN Mar 19 1944
Date	Employee's Signature B H

[Printer's Note: Above tickets over stamped with red fig. 7.]

PLAINTIFF'S EXHIBIT "B"

	60	60	60	60	60	60	60	
10	Olympic Commissary Co.				No. 321350 A			50
10	MEN'S MEAL TICKET							50
10	Good Only at Mess Hall No. 7							50
10	\$12.60 Plus Tax							50
10	Name :.....							50
10	Badge No.....			Date.....				50
	60	60	60	60	60	60	60	

[Clerk's Note: Exhibit B is a cigar box filled with 961 blank tickets of which the above is a sample.]

PLAINTIFF'S EXHIBIT "C"

	60	60	60	60	60	60	60	
10	Olympic Commissary Co.				No. 321350 A			50
10	MEN'S MEAL TICKET							50
10	Good Only at Mess Hall No. 7							50
10	\$12.60 Plus Tax							50
10	Name: A. M. CLARK							50
10	Badge No. 10-7435			Date: 4-23-44				50
	60	60	60	60	60	60	60	

[Clerk's Note: The figures with line through them indicate punch out on original ticket.]

[Printer's Note: Above tickets over stamped with red fig. 7.]

PLAINTIFF'S EXHIBIT "D"

	60	60	60	60	60	60	60	
10	Olympic Commissary Co.				No. 321350 A		50	
10	MEN'S MEAL TICKET						50	
10	Good Only at Mess Hall No. 7						50	
10	\$12.60 Plus Tax						50	
10	Name: J. R. HARVEY						50	
10	Badge No. 10-8340				Date: 4-14-44		50	
	60	60	60	60	60	60	60	

.. [Clerk's Note: The figure with line through it indicates punch out on original ticket.]

PLAINTIFF'S EXHIBIT "E"

	60	60	60	60	60	60	60	
10	Olympic Commissary Co.				No. 321350 A			50
10	MEN'S MEAL TICKET							50
10	Good Only at Mess Hall No. 7							50
10	\$12.60 Plus Tax							50
10	Name: J. R. HARVEY							50
10	Badge No. 10-8340				Date: 4-18-44			50
	60	60	60	60	60	60	60	

[Clerk's Note: The figure with line through it indicates punch out on original ticket.]

[Printer's Note: Above tickets over stamped with red fig. 7.]

PLAINTIFF'S EXHIBIT "F"

(Four tickets as follows)

	60	60	60	60	60	60	60	
10	Olympic Commissary Co.	No. 321350 A	50					
10	MEN'S MEAL TICKET						50	
10	Good Only at Mess Hall No. 7						50	
10	\$12.60 Plus Tax						50	
10	Name: J. R. HARVEY						50	
10	Badge No. 10-8340	Date: 4-2-44	50					
	60	60	60	60	60	60	60	

	60	60	60	60	60	60	60	
10	Olympic Commissary Co.	No. 321350 A	50					
10	MEN'S MEAL TICKET						50	
10	Good Only at Mess Hall No. 7						50	
10	\$12.60 Plus Tax						50	
10	Name: A. M. CLARK						50	
10	Badge No. 10-7435	Date: 4-23-44	50					
	60	60	60	60	60	60	60	

	60	60	60	60	60	60	60	
10	Olympic Commissary Co.	No. 321350 A	50					
10	MEN'S MEAL TICKET						50	
10	Good Only at Mess Hall No. 7						50	
10	\$12.60 Plus Tax						50	
10	Name: A. M. CLARK						50	
10	Badge No. 10-2345	Date: 4-21-44	50					
	60	60	60	60	60	60	60	

[Printer's Note: Above tickets overstamped with red fig. 7.]

Plaintiff's Exhibit "F"—(Continued)

	60	60	60	60	60	60	60	
10	Olympic Commissary Co.							50
10	MEN'S MEAL TICKET							50
10	Good Only at Mess Hall No. 7							50
10	\$12.60 Plus Tax							50
10	Name: R. A. DUNHAM							50
10	Badge No. 10-7531					Date: 4-22-44		50
	60	60	60	60	60	60	60	

[Printer's Note: Above tickets over stamped with red fig. 7.]

PLAINTIFF'S EXHIBIT "G"

5-6-44

Yakima, Wash.

I, Richard Roland Haugen, hereby give this statement voluntarily to C. Erwin Piper, Special Agent of the Federal Bureau of Investigation. No threats, promises, or rewards have been made or offered to me in consideration thereof. I have been advised that, this statement may be used against me in court.

On April 14, 1944 I left Hanford, Wash. by bus en route to Tacoma Wash. driving there on the morning of the 15th. I registered at the Olympic Hotel in Tacoma under the name of Dick Hartley. On that same morning (April 15, 1944) I went to the print shop across the street from the hotel and ordered them to print (1000) one thousand Men's

[R.R.H.]

Meal Tickets for the ~~Olympic Commissar~~—me. The name of the Olympic Commissary Co. was to appear thereon. I gave the print shop a ticket which I had purchased from the Olympic Commissary Co. and asked that this be duplicated. The print shop is located just across Pacific Ave., facing the Olympic Hotel. The price for one thousand of these [R.R.H.] tickets was \$10.95. In order to get them made in a hurry I agreed to pay \$5.00 more for them. On Monday morning, the 17th of April, 1944, the man from the print shop came to the hotel and asked whether I wished to have the numbers on the tickets serialized. I told him to make all of them with the same serial number. I got the tickets (1000) on the afternoon of the 17th and paid the print ship \$16.00 in cash.

On the 17th of April at about 9 P. M. I left Tacoma for Spokane, arriving there on the 18th. I left Spokane on the 19th en route to ~~Han~~ [R. R. H.] Yakima and then to Hanford, Wash. I arrived in Hanford on the evening of April 20, 1944.

From the 21st of April, 1944 until May 1, 1944, I sold these counterfeit meal tickets to other employees at the Hanford Engineering Works. I sold them for \$5.50 apiece. The men to whom I sold them could in turn sell them for whatever they wished. I sold about twenty (20) of the counterfeit tickets, knowing they were counterfeit and that [R. R. H.] [21] it was illegal to sell them. I have
fifty
received approximately ~~one hundred~~ dollars
(\$50.00)
~~(\$100.00)~~ [R.R.H.] from the return of such tickets.

On May 1, 1944, I turned over four (4) of the counterfeit meal tickets to Special Agent Piper. I told him that the balance of the tickets were in my hotel room, room 312 of the Commercial Hotel, Yakima, Wash. and that he could get them there. I think there were about nine hundred eighty (980) of these tickets left in a cigar box in my room.

restitution

I am willing and wish to make ~~retribution~~ to the men to whom I sold the counterfeit tickets.

I have read the above statement consisting of three pages and certify that it is true to the best of my knowledge.

RICHARD R. HAUGEN

LOREN T. COULTER

C. ERWIN PIPER

Special Agent, F. B. I. [22]

PLAINTIFF'S EXHIBIT "Q"

United States of America

War Department

Washington, 9 June, 1944.

I Hereby Certify that the attached War Department Procurement Regulation No. 1, and pages 305, 310 and 310.1 of War Department Procurement Regulation No. 3 are true extracts of Regulations issued by the Commanding General, Headquarters, Army Service Forces, War Department. I further certify that the authorities described in the foregoing extracts are now in full force and

Plaintiff's Exhibit "Q"—(Continued)
effect and have been in full force and effect from
their respective dates.

H. C. KILPATRICK

Major, Corps of Engineers,
JPT

Executive Officer JD

I Hereby Certify that Major H. C. Kilpatrick,
who signed the foregoing certificate, is the Execu-
tive Officer to the Chief of Engineers and that to
his certification as such full faith and credit are
and ought to be given.

In Testimony Whereof I, Henry L. Stimson,
Secretary of War, have hereunto caused the seal
of the War Department to be affixed and my name
to be subscribed by the Assistant Chief Clerk of
the said Department, at the City of Washington,
this 9th day of June, 1944.

[Seal]

HENRY L. STIMSON

Secretary of War.

By J. C. COOK,

Assistant Chief Clerk. [23]

Plaintiff's Exhibit "Q"—(Continued)

4-7-44 (8-13-43)

101 PR 1

PROCUREMENT REGULATION

No. 1

GENERAL INSTRUCTIONS

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GENERAL INSTRUCTIONS

Section I.

INTRODUCTION

- (101) Publication of procurement regulations

Plaintiff's Exhibit "Q"—(Continued)

During the past few years it has been the practice of the War Department to publish procurement regulations in several different publications, viz: Army Regulations, War Department Circulars, etc. It has also been the practice to include in such regulations precise details of how purchases were to be effected. For reasons too obvious to mention, neither practice can be justifiably continued in view of the present war emergency. Accordingly, a new numbered series of procurement regulations has been prepared to replace all other procurement regulations outstanding as of this date. As changes in or additions to this new series of regulations become necessary, the same will be effected by the publication of corrected or supplemental sheets to the appropriate regulation.

(102) Rescission of Army Regulations. The following Army Regulations have been rescinded:

AR 5-5	AR 5-100
AR 5-50	AR 5-140
AR 5-160	AR-5-300
AR 5-200	AR 5-320
AR 5-220	AR 5-340
AR 5-240	AR 5-360
AR 5-260	

(103) Rescission of Procurement Circulars. Effective July 1, 1942, all War Department Procurement Circulars which have not been rescinded heretofore are hereby rescinded. [25]

(103-A) Rescission of "T" Series of Procure-

Plaintiff's Exhibit "Q"—(Continued)
ment Regulations.— The temporary series of Procurement Regulations with numbers followed by "T", heretofore issued, is hereby rescinded.

(104) Rescission of other instructions and directives.— All prior instructions and directives which are inconsistent with instructions contained in these Procurement Regulations, as originally issued under date of July 1, 1942, or as the same shall be amended from time to time, shall be deemed rescinded as of July 1, 1942 or as of the date of any such amendment, as the case may be.

Section II.

DISTRIBUTION OF PROCUREMENT REGULATIONS

(105) Deleted.

(106) Distribution of Procurement Regulations.
All communications pertaining to the distribution of Procurement Regulations including

- (1) requests for complete sets
- (2) requests for increase or decrease in the number of copies of revisions to be furnished;
- (3) requests for copies of particular revisions;
- (4) requests for missing pages or tab cards;
- (5) requests for change of address to which revisions are to be forwarded;

should be sent to Legal Branch, Office, Director of Materiel Headquarters, Army Service Forces, Room 5C 659 The Pentagon, Washington 25, D. C.

Any request which involves any increase or decrease in the number of copies of revisions to be

Plaintiff's Exhibit "Q"—(Continued)

furnished should specify not only the new number of copies desired but also the number of copies currently being furnished. In addition, any such request and any request for a change of address should specify the mailing address (as appearing on the envelope or package in which revisions are received) to which revisions currently are being forwarded. [26]

Communications (including requests mentioned in this paragraph 106) pertaining to the distribution of Procurement Regulations may be by letter or memorandum. Such requests need not be in the form of formal requisitions.

Section III.

APPLICABILITY OF REGULATIONS

(107) Authority with respect to procurement.

(107.1) Basic statute. Sec. 897 of the Military Laws (Supp. II, 1942) provides as follows:

“Secretary of War, Under Secretary of War, and Assistant Secretary of War; duties in connection with procurement. Hereafter the Secretary of War, in addition to other duties imposed upon him by law, shall be charged with the supervision of the procurement of all military supplies and other business of the War Department pertaining thereto and the assurance of adequate provision for the mobilization of materiel and industrial organizations essential to wartime needs, and he may assign to the Under Secretary of War and The Assistant Secretary of War such duties in connection there-

Plaintiff's Exhibit "Q"—(Continued)

with as he may deem proper. * * *” Sec. 5a, added to act of June 3, 1916, by sec. 5 act of June 4, 1920 (41 Stat. 761); sec. 2, act of Dec. 16, 1940 (54 Stat. 1224); 10 U.S.C. 1193.

(107.2) Delegations from the Secretary of War to the Under Secretary of War. (1) On April 21, 1941, the Secretary of War issued the following order:

“Pursuant to authority contained in the Act of December 16, 1940 (Public No. 891—76th Congress):

a. The duties and responsibilities placed on the Secretary of War by Section 5a of the National Defense Act, as amended, are hereby assigned to the Under Secretary of War.

b. Chiefs of branches of the Army will report directly to the Under Secretary of War regarding all matters of procurement.

c. The Under Secretary of War will continue to perform the duties and discharge the responsibilities placed on The Assistant Secretary of War by Army Regulations No. 5-5, July 16, 1932, Orders E, War Department, November 28, 1933, and all other existing orders or instructions. [27]

d. The office heretofore designated as the Office of The Assistant Secretary of War will hereafter be designated the Office of the Under Secretary of War. All officers and civilian employees now detailed to the Office of the Under Secretary of War or the Office of The Assistant Secretary of War from the branches engaged in procurement, and all

Plaintiff's Exhibit "Q"—(Continued)

other officers and employees now on duty in the Office of the Under Secretary of War or in the Office of The Assistant Secretary of War, shall continue on such detail and duty in the Office of the Under Secretary of War.

e. During the absence or disability of the Under Secretary of War, or in the event of a temporary vacancy in that office, the duties and responsibilities of the Under Secretary of War shall be performed and discharged by The Assistant Secretary of War, and in the case of the absence or disability of both the Under Secretary of War and The Assistant Secretary of War, or in the event of a temporary vacancy in both of said offices, the duties and responsibilities of the Under Secretary of War shall be performed and discharged by the Assistant Secretary of War for Air."

(2) Under date of December 30, 1941, the Secretary of War issued the following memorandum:

Memorandum for the Under Secretary of War.

Subject: Delegation of Authority under Executive Order No. 9001.

The powers delegated to the War Department by Executive Order No. 9001, dated December 27, 1941, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance, progress, and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts are hereby further delegated to the Under Secretary of War.

Plaintiff's Exhibit "Q"—(Continued)

He may, pursuant to Executive Order No. 9001, exercise such powers either personally or through such officer or officers or civilian officials of the War Department as he may direct, and he may confer upon such officers or civilian officials the power to make further delegations of such powers within the War Department.

/s/ HENRY L. STIMSON

Secretary of War.

(3) War Department Circular 59, issued under date of March 2, 1942, provides in part as follows:

1. The President has approved a reorganization of the War Department and the Army, effective March 9, 1942. Pending the issuance of detailed instructions and changes in regulation, a summary description of the new organization is furnished for the information and guidance of all concerned.

* * * *

e. Supply arms and services and War Department offices and agencies will come under the direct command of the Commanding General, Services of Supply as indicated below:

(1) Those parts of the office of the Under Secretary of War engaged in functions of procurement and industrial mobilization.

* * * *

b. The mission of the Army Air Forces is to procure and maintain equipment peculiar to the Army Air Forces, and to provide air force units properly organized, trained, and equipped for combat operations. Procurement and related functions

Plaintiff's Exhibit "Q"—(Continued)

will be executed under the direction of the Under Secretary of War.

* * * *

7. Services of Supply—a. The duties and responsibilities placed on the Secretary of War by Section 5a of the National Defense Act, as amended shall continue to be performed by the Under Secretary of War. The Director of Production shall continue to perform his present services reporting direct to the Under Secretary of War.

b. The Commanding General, Services of Supply, shall, on procurement and related matters, act under the direction of the Under Secretary of War and shall, on military matters, report to the Chief of Staff. The Commanding General, Services of Supply, is charged in general with the functions, responsibilities, and authorities of command authorized by law, Army Regulations, and custom over individuals and units assigned to the Services of Supply.

c. The mission of the Services of Supply is to provide services and supplies to meet military requirements except those peculiar to the Army Air Forces. Procurement and related functions will be executed under the direction of the Under Secretary of War.

d. The Services of Supply consolidated under the jurisdiction of the Commanding General, Services of Supply, the supply arms and services, [29] certain administrative services of the War Department, certain parts of the office of the Under Secre-

Plaintiff's Exhibit "Q"—(Continued)

tary of War, certain boards and committees, general depots, ports of embarkation and auxiliaries, and corps areas, with such amalgamation, reallocation of duties, and reorganization as is necessary or advisable.

e. The following duties are specifically assigned to the Services of Supply:

(1) The direction and supervision of engineering research, development, procurement, storage, and distribution of supplies and equipment, except those peculiar to the Army Air Forces.

(2) The establishment of purchasing and contractual policies and procedure.

(3) Transportation and traffic control.

(4) Construction for the Army.

(5) The consolidation of programs and requirements of the Army with the programs and requirements received from Defense Aid and the Navy and procured by the Army.

(107.3) Responsibilities of the Under Secretary of War fixed by AR 5-5. Although Army Regulation 5-5 is rescinded, the portion thereof relating to the responsibilities of The Assistant Secretary of War (now the Under Secretary of War) is incorporated by reference in paragraph c. of the above quoted order of the Secretary of War, dated April 21, 1941. The portion of said Regulation which is thus continued in force reads as follows:

* * * *

“b. Definition.—Under section 5a, national defense act, as amended, the Assistant Secretary of

Plaintiff's Exhibit "Q"—(Continued)

War, under the direction of the Secretary of War, is charged, among other duties, with the supervision of all administrative and operative functions and installations of the Military Establishment concerned in the acquisition or production of military supplies. The types of materiel desired having been specified by the proper agencies, the responsibilities of the Assistant Secretary of War, under the statute, begin with the necessary preliminary and preparatory measures for the procurement or production of such materiel, and end with its delivery to the proper supply arms and services for issue. [30]

"c. Supervision over procurement includes preparation of plans and policies and supervision of activities concerning—

(1) Research and development of substitutes for critical and strategic materials and of materials, methods or processes, and facilities for manufacturing purposes.

(2) The procurement of materials and facilities for manufacturing purposes.

(3) Preparation of United States Army manufacturing specifications and the commercial standardization activities of the supply arms and services. See AR 850-25.

(4) Procurement of all military supplies by purchase, production, or other means, whether obtained for experimental, service test, or issue purposes; inspection, test, acceptance, and storage of supplies incident to procurement; the procurement

Plaintiff's Exhibit "Q"—(Continued)

of real estate and the construction, operation, maintenance, repair, and inspection of all establishments and facilities for the foregoing purposes.

(5) Procurement of supplies for other Government departments or for foreign governments at their request.

(6) The acquisition and use of patent rights by the War Department and the Army.

(7) The transfer or exchange of military supplies in conformity with approved policies.

(8) The renovation of materiel on a production basis at an establishment functioning under the direct control of a chief of a supply arm or service in accordance with approved policies and projects.

(9) The collection of information and compilation of data pertaining to sources of supply.

(10) The assurance of adequate and timely provisions for the mobilization of the materiel and industrial organizations essential to war-time needs, including arrangements in the supply arms and services and and arrangements with the agencies outside the War Department.

(11) The Army Industrial College, Washington, D. C.

(12) Instruction in business administration at civilian institutions.

(13) Fiscal matters pertinent to procurement in accordance with instructions contained in paragraph 1b(2) and (4) of orders E, War Department, October 29, 1925. [31]

(14) Legislation relating to procurement.

Plaintiff's Exhibit "Q"—(Continued)

(15) Civilian personnel engaged on procurement duties.

(16) Any other matters pertaining solely to the business activities of the War Department in the procurement of military supplies. The determining factor in all cases will be whether the aspect of the particular activity concerned in the given case is incident to procurement. If it is, the statute places it under the supervision of the Assistant Secretary of War.

"d. The Assistant Secretary of War will represent the War Department—

(1) On all interdepartmental boards for the standardization of—

(a) Specifications

(b) Procurement procedure

(2) On the Army and Navy Munitions Board.

(3) In dealing with any interdepartmental or superdepartmental agency that may be created in connection with the allocation of materiel or industrial facilities to various uses.

(4) In arranging necessary contacts with other standardization bodies such as the American Engineering Standards Committee and the Division of Simplified Practice, Department of Commerce.

(5) On the Patents and Design Board. Sec. 10 (r), act July 2, 1926 (44 Stat. 788; U.S.C. 10:310(r); sec. 2041, M.L., 1929).

(6) On the Advisory Air Coordination Committee.

Plaintiff's Exhibit "Q"—(Continued)

(7) In dealing with any interdepartmental or superdepartmental agency that may be created in connection with aeronautical matters.

"e. Chiefs of supply arms and services will report directly to and will correspond directly with the Assistant Secretary of War on all matters covered above.

"2. Delegated duties.—The following duties are delegated to the Assistant Secretary of War and are classified as follows:

"a. Military

(1) (a) Matters pertaining to the Militia Bureau and the National Guard.

(b) Matters pertaining to the Officers' Reserve Corps and the Organized Reserves.

(c) Clemency cases in mitigation or remission of sentence by courts-martial. [32]

(2) Correspondence on the matters in (1) above will follow the usual military channels.

"b. Nonmilitary.

(1) (a) The sale or disposal of surplus supplies, equipment, plants, land, or other facilities.

(b) Claims, foreign or domestic, by or against the War Department, including those resulting from the operation of aircraft.

(c) The purchase and sale of real estate; the lease of real estate for the use of the War Department; the granting of leases or licenses to individuals, corporations, or organizations for the temporary use of land, buildings, or other property under War Department control; and easements or

Plaintiff's Exhibit "Q"—(Continued)

rights of way across military reservations, in accordance with approved policies.

(d) The activities relating to the National Board for the Promotion of Rifle Practice and to civilian marksmanship.

(e) Approval of expenditures from funds allotted, and of public vouchers for expenditures by the disbursing clerk of the War Department; approval of the program of expenditures by the National Board for the Promotion of Rifle Practice; routine expenditures from the appropriation "Contingencies of the Army"; and expenditures from "Contingencies, Military Information Division," for extraordinary expenses of military attaches and observers abroad.

(f) Matters relating to national military parks and national monuments.

(g) Matters relating to national cemeteries in the United States and abroad.

(h) Authorization of advertising.

(i) Regulations for burial expenses of deceased military personnel (AR 30-1830).

(j) The use of patent rights by the War Department and the Army.

(k) Bridge permits and extensions of time for completion of bridges.

(l) Disposition of engineer property pertaining to rivers and harbors.

(m) Permits for laying submarine cable.

(2) Correspondence on the matters in (1) above will be direct [33] between the office of the Assist-

Plaintiff's Exhibit "Q"—(Continued) .
ant Secretary of War and the agency or office concerned unless otherwise directed."

(107.4) Orders, Directives, Regulations, and Instructions relating to Procurement Policy, Organization or Procedure.—Under date of 16 September 1943, the Under Secretary of War addressed the following memorandum to the Commanding General, Army Air Forces and the Commanding General, Army Service Forces:

Memorandum For: The Commanding General,
Army Air Forces; The Commanding General,
Army Service Forces.

1. Until otherwise directed, existing orders, directives, re regulations and instructions with reference to procurement policy, organization of procedure, which have heretofore been issued by the Under Secretary of War, or by The Commanding General, Army Service Forces (formerly Services of Supply), or by higher authority, are applicable to the Army Air Forces as well as the Army Service Forces, unless otherwise specifically indicated.

2. Uniformity of policies and procedures in procurement and related matters will be accomplished in so far as practicable. To achieve this objective the following procedure is prescribed:

a. Prior to their issuance, important orders, directives, regulations or instructions affecting major policies on procurement or related matters will be presented to the Under Secretary of War for his approval.

Plaintiff's Exhibit "Q"—(Continued)

b. All other orders, directives, regulations or instructions to carry out approved policies will be processed and issued by the Commanding General, Army Service Forces, without reference to the Under Secretary of War.

c. Orders, directives, regulations and instructions indicated in paragraphs a. and b. above will be issued by the Commanding General, Army Service Forces. They will be applicable to the Army Air Forces unless otherwise specifically indicated. Where so applicable, they shall, prior to their issuance, be cleared in each case with the Commanding General, Army Air Forces, through an Army Air Forces Liaison Officer designated by him. The Director, Purchases Division, Army Service Forces, will be responsible for referring such orders, directives, regulations and instructions to the Army Air Forces Liaison Officer for clearance. If the Army Air Forces disagree with the proposal in so far as it would be applicable to them, the matter will be submitted to the Under Secretary of War for decision.

d. The Commanding General, Army Service Forces, will furnish the [34] Commanding General, Army Air Forces, with such number of copies of said orders, directives, regulations and instructions as the latter desires for redistribution to agencies under his jurisdiction.

3. This memorandum will supersede my communication dated 9 April 1942 to The Commanding General, Materiel Command, Army Air Forces and

Plaintiff's Exhibit "Q"—(Continued)

The Commanding General, Services of Supply, on the same subject. (The superseded memorandum was formerly set forth in this paragraph 107.4).

ROBERT P. PATTERSON,
Under Secretary of War.

(107.5) Delegations from the Under Secretary of War. (1) To the Commanding General, Army Service Forces—Under date of September 15, 1942, the following memorandum was issued by the Under Secretary of War:

Memorandum for the Commanding General,
Services of Supply

Subject: Delegation of Authority.

1. In confirmation of and supplementing the memorandum of the undersigned to the Commanding General, Services of Supply dated June 29, 1942 on the above subject, authority is hereby delegated to the Commanding General, Services of Supply, to act for the Secretary of War or the Under Secretary of War in clearing, approving, and taking other action in respect to contracts, change orders, supplemental agreements, advance payments, awards, letters of intent, letter contracts, letter purchase orders, leases, amendments of contracts and other contractual instruments; to make, authorize and approve sales or contracts for the sale of equipment, supplies and material; to prescribe and modify regulations in respect of procurement; and to approve new War Department contract forms

Plaintiff's Exhibit "Q"—(Continued)

and deviations from approved forms of contracts, including all authority heretofore delegated to the undersigned by the Secretary of War pursuant to Public Law 354, 77th Congress and Executive Order 9001.

2. Without any limitation of the powers and authority hereinbefore granted, there is hereby vested in the Commanding General, Services of Supply, pursuant to and subject to the provisions of Title II of the First War Powers Act (Public Law 354, 77th Congress) and Executive Order 9001 the authority to take the following action:

a. He may enter into, amend or modify contracts, may make purchases, may place orders, and make advance progress and other payments [35] on such contracts, purchases and orders without regard to the provisions of law relating to the making, performance, amendment or modification of contracts.

b. The contracts hereby authorized to be made include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of things and services necessary, appropriate or convenient for the prosecution of war, or for the invention, development or production of, or research concerning any such things, including but not limited to, aircraft, buildings, vessels, arms, armament, equipment, or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools and any other equipment, without any

Plaintiff's Exhibit "Q"—(Continued)
restruction of any kind, either as to type, character, location or form.

c. Whenever, in the judgment of the Commanding General, Services of Supply (or of an officer or civilian employee of the War Department to whom authority has been delegated to exercise such powers), the prosecution of the war is thereby facilitated, he may amend or modify contracts heretofore or hereafter made for the purpose of (1) obtaining continued operations by contractors engaged in war production, (2) encouraging greater diligence on the part of contractors, (3) protecting contractors from the consequences of unforeseen or unexpected events, (4) adjusting contracts to new conditions and circumstances, including those created by the rules, orders, instructions and determinations of Government departments, or (5) for any other purposes for facilitating the prosecution of the war.

Such amendments and modifications of contracts may be without consideration, other than the determination that the prosecution of the war will thereby be facilitated, and may be utilized to accomplish the same things as any original contract could accomplish, irrespective of the time or circumstances of the making of or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof. The powers hereby delegated may be exercised by (1) supple-

Plaintiff's Exhibit "Q"—(Continued)

mental agreements which modify or amend or settle claims by or against the United States arising under or with respect to any contracts heretofore or hereafter made; (2) agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated [36] damages or liability under any surety or other bond; or (3) supplemental agreements and change orders suspending or modifying the operation of existing contracts as yet uncompleted, and providing for the payment by the Government of the damages incurred by a contractor by reason of such suspension or modification; provided in each instance that full performance by the contractor under such contract, or under a series of contracts between the United States and the same contractor for substantially the same goods, shall not have been completed and final payment made thereunder. The supplemental contracts hereby authorized to be made include agreements of all kinds for all types and kinds of things and services necessary, appropriate or convenient for the prosecution of the war, or for the invention, development or production of, or research concerning any such things.

d. He may waive bid, payment, performance, or other bonds, and dispense with advertising for bids and competitive bidding.

3. Nothing herein shall affect the existing authority of the Commanding General, Services of Supply, as to matters relating to the Army Air Forces, the extent of which is set forth in the letter

Plaintiff's Exhibit "Q"—(Continued)

of April 9, 1942, from the Under Secretary of War to the Commanding General, Materiel Command, Army Air Forces, and to the Commanding General, Services of Supply, or any authority in respect of Army Air Force contracts and other contractual instruments, delegated to Colonel Albert J. Browning, A.U.S., by memoranda of the undersigned dated June 1, 1942, and September 15, 1942, nor shall anything herein contained be construed to limit or affect the power and authority of any commander in any theatre of operation.

4. The Commanding General, Services of Supply, or any person acting by delegation from him in the exercise of the powers hereby granted, shall have power to ratify and approve any contractual documents entered into or action taken by others, which he himself might have entered into or taken by virtue of the powers hereby granted.

5. The powers, authority and discretion hereby conferred upon the Commanding General, Services of Supply, or any portion or portions thereof, may be redelegated by him to whomsoever he may designate, including without limitation the Director, Purchases Division, Services of Supply, with the power of redelegating such powers, in whole or in part, to any officer or officers or civilian official or officials of the War Department. In any [37] delegation of power or authority hereunder there may be included such terms and conditions, if any, as the person making such delegation may deem appropriate to ensure proper exercise of such power and authority

Plaintiff's Exhibit "Q"—(Continued)
in the interest of the United States and of the
prosecution of the war.

/s/ ROBERT P. PATTERSON,
Under Secretary of War.

The memorandum of the Under Secretary of
War, dated June 29, 1942, referred to in above mem-
orandum reads as follows:

Memorandum for the Commanding General,
Services of Supply

Subject: Delegation of Authority.

1. Authority is hereby delegated to the Com-
manding General, Services of Supply, to act for
the Secretary of War or the Under Secretary of
War in clearing, approving, and taking other ac-
tion in respect to contracts, change orders, supple-
mental agreements, advance payments, awards, let-
ters of intent, letter contracts, letter purchase or-
ders, leases, amendments of contracts, and other
contractual instruments; to approve sales of equip-
ment, supplies and material; and to approve new
War Department contract forms and deviations
from approved forms of contracts, including all
authority heretofore delegated to the undersigned
by the Secretary of War pursuant to Public Law
354, 77th Congress and Executive Order No. 9001.

2. The Commanding General, Services of Sup-
ply, is authorized further to delegate the above
powers or any portion thereof to whomsoever he
may designate, with the power of redelegation.

3. The following memoranda are each hereby

Plaintiff's Exhibit "Q"—(Continued)

revoked; viz: (1) Memorandum for Mr. Albert J. Browning, dated March 13, 1942, delegating certain authority to the Chief of the Purchase Branch, Procurement and Distribution Division, Services of Supply, and (2) Memorandum for Colonel Albert J. Browning, A.U.S., dated June 2, 1942, delegating certain authority to him, as Chief of the Purchases Branch, Procurement and Distribution Division, Services of Supply. Nothing herein contained shall be construed as revoking the delegation of authority to Chiefs of Supply Services contained in Procurement Circular No. 91, dated December 29, 1941, and Procurement Circular No. 17, dated February 24, 1942, nor any delegation of authority heretofore made by the Commanding General, Services of Supply, or the Chief, Purchases Branch, Procurement and Distribution Division.

4. Nothing herein shall affect the existing authority of the Commanding General, Services of Supply, as to matters relating to the Army [38] Air Forces, the extent of which is set forth in the letter of April 9, 1942, from the Under Secretary of War to the Commanding General, Materiel Command, Army Air Forces and to the Commanding General, Services of Supply, or any authority in respect of Army Air Force contracts and other contractual instruments, delegated to Colonel Albert J. Browning, A.U.S. by memorandum of the undersigned, dated June 1, 1942.

/s/ ROBERT P. PATTERSON

Under Secretary of War.

Plaintiff's Exhibit "Q"—(Continued)

(2) To the Chief of Staff—Under date of January 11, 1943, the following memorandum was issued by the Under Secretary of War:

Memorandum for The Chief of Staff:

1. There is hereby delegated to the Chief of Staff full power, in connection with operations subject to his direction and control, to exercise any of the authority and powers pursuant to Executive Order No. 9001 delegated to the undersigned by the Secretary of War by instrument dated December 30, 1941 (see Procurement Regulations, paragraph 107.2). The Chief of Staff may, pursuant to Executive Order No. 9001, exercise such powers either personally or through such officer or officers or civilian officials of the War Department as he may direct and he may confer upon such officers or civilian officials the power to make further delegations of such powers within the War Department.

2. All action heretofore taken by the Chief of Staff or by the direction of the Chief of Staff, that would by this delegation be authorized, is hereby ratified and confirmed. There is hereby expressly conferred upon the Chief of Staff the power and authority to ratify and confirm any action heretofore taken by any person responsible directly or indirectly to the Chief of Staff that would by this delegation of authority be authorized.

Dated this 11th day of January, 1943.

/s/ ROBERT P. PATTERSON

Under Secretary of War.

Plaintiff's Exhibit "Q"—(Continued)

(107.6) Delegations from the Commanding General, Services of Supply to the Director, Purchases Division.—Under date of September 16, 1942, the following memorandum was issued by the Commanding General, Services of Supply: [39]

Memorandum For: Director, Purchases Division.

Subject: Delegation of Authority.

In confirmation of and supplementing the memorandum of the undersigned, dated June 29, 1942, to the Chief, Purchases Branch, Procurement and Distribution Division, Services of Supply (now the Director, Purchases Division, Services of Supply), the authority delegated to the Commanding General, Services of Supply, by memorandum of the Under Secretary of War, dated September 15, 1942 to act for the Secretary of War or the Under Secretary of War in clearing, approving, and taking other action in respect to contracts, change orders, supplemental agreements, advance payments, awards, letters of intent, letter contracts, letter purchase orders, leases, amendments of contracts and other contractual instruments, to make, authorize and approve sales or contracts for the sale of equipment, supplies and material and to approve War Department contract forms and deviations from approved forms, including all authority heretofore delegated to the undersigned pursuant to Public Law 354, 77th Congress, and Executive Order 9001 (including without limitation all authority pursuant to Public Law 354 and Executive Order 9001 delegated to the undersigned by the Under Secre-

Plaintiff's Exhibit "Q"—(Continued)

tary of War by the memorandum dated September 15, 1942), is hereby delegated to the Director, Purchases Division, Services of Supply. The Director, Purchases Division, is authorized to delegate further the above powers, authority, and discretions or any portion thereof to any officer or officers, or civilian official or officials of the War Department he may designate, with the power of redelegation. In any delegation of power or authority hereunder there may be included such terms and conditions, if any, as the person making such delegation may deem appropriate to ensure proper exercise of such power and authority in the interest of the United States and of the prosecution of the War.

/s/ BREHON SOMERVELL

Lieutenant General
Commanding

The memorandum of the Commanding General dated June 29, 1942, referred to in the above memorandum reads as follows:

Memorandum For: Chief, Purchases Branch,
Procurement and Distribution Division.

Subject: Delegation of Authority.

The authority delegated to the Commanding General, Services of [40] Supply, by memorandum of the Under Secretary of War, dated June 29, 1942, to act for the Secretary of War or the Under Secretary of War in clearing, approving, and taking other action in respect to contracts, change orders, supplemental agreements, advance payments,

Plaintiff's Exhibit "Q"—(Continued)

awards, letters of intent, letter contracts, letter purchase orders, leases, amendments of contracts and other contractual instruments, to approve sales of equipment, supplies and material and to approve War Department contract forms, and deviations from approved forms including all authority heretofore delegated to the undersigned pursuant to Public Law 354, 77th Congress, and Executive Order 9001, is hereby delegated to the Chief, Purchases Branch, Procurement and Distribution Division, Services of Supply. The Chief, Purchases Branch, Procurement and Distribution Division, is authorized to delegate further the above powers or any portion thereof to whomsoever he may designate, with the power of redelegation.

/s/ BREHON SOMERVELL

Lieutenant General

Commanding

(107.7) Delegations from the Under Secretary of War to the Special Representative of the Under Secretary of War for the Army Air Forces.—Under date of September 15, 1942, the following memorandum was issued by the Under Secretary of War:

Memorandum For: Colonel Albert J. Browning, A.U.S., Special Representative of the Under Secretary of War.

Subject: Delegation of Authority.

1. In confirmation of and supplementing the memorandum of the undersigned to Colonel Albert

Plaintiff's Exhibit "Q"—(Continued)

J. Browning, A.U.S., dated June 1, 1942, on the above subject, authority is hereby delegated to Colonel Browning to act for the Secretary of War or the Under Secretary of War, in clearing, approving, and taking other action in respect to Army Air Force contracts, change orders, supplemental agreements, advance payments, awards, letters of intent, letter contracts, letter purchase orders, leases, amendments of contracts, and other contractual instruments; to make, authorize and approve sales or contracts for the sale of Army Air Force equipment, supplies and material; and to approve new War Department Army Air Force contract forms and deviations from approved forms of contracts, including all authority with respect to Army Air Force contracts and agreements of all kinds heretofore delegated to the undersigned by the Secretary of War pursuant to Public Law 354, 77th Congress and Executive Order No. 9001. This [41] memorandum, however, shall not affect the existing authority of the Commanding General, Services of Supply, as to matters relating to Air Forces, the extent of which is set forth in the letter dated April 9, 1942 from the Under Secretary of War to the Commanding General, Materiel Command, Army Air Forces, and to the Commanding General, Services of Supply. Colonel Browning, and any person or persons designated by him as such, acting under the authority herein contained will act as "Special Representative of the Under Secretary of War."

Plaintiff's Exhibit "Q"—(Continued)

2. Without any limitation of the powers and authority hereinbefore granted, there is hereby vested in Colonel Browning, pursuant to and subject to the provisions of Title II of the First War Powers Act (Public Law 354, 77th Congress) and Executive Order No. 9001 the authority to take the following action:

a. He may enter into, amend or modify contracts, may make purchases, may place orders, and may make advance progress and other payments on such contracts, purchases and orders without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts.

b. The contracts hereby authorized to be made include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of things and services necessary, appropriate or convenient for the prosecution of war, or for the invention, development, or production of, or research concerning any such things, including but not limited to, aircraft, buildings, vessels, arms, armament, equipment, or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities machinery, machine tools, and any other equipment, without any restriction of any kind, either as to type, character, location or form.

c. Whenever, in the judgment of Colonel Browning, (or of an officer or civilian employee of the War Department to whom authority has been dele-

Plaintiff's Exhibit "Q"—(Continued)

gated to exercise such powers), the prosecution of the war is thereby facilitated, he may amend or modify contracts heretofore or hereafter made for the purpose of (a) obtaining continued operations by contractors engaged in war production, (b) encouraging greater diligence on the part of contractors, (c) protecting contractors from the consequences of unforeseen or unexpected events, (d) adjusting contracts to new conditions and circumstances, including [42] those created by the rules, orders, instructions and determinations of Government departments, or (e) for any other purposes for facilitating the prosecution of the war.

Such amendments and modifications of contracts may be without consideration, other than the determination that the prosecution of the war will thereby be facilitated, and may be utilized to accomplish the same things as any original contract could accomplish, irrespective of the time or circumstances of the making of or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof. The powers hereby delegated may be exercised by (a) supplemental agreements which modify or amend or settle claims by or against the United States arising under or with respect to any contracts heretofore or hereafter made; (b) agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or lia-

Plaintiff's Exhibit "Q"—(Continued)

bility under any surety or other bond; or (c) supplemental agreements and change orders suspending or modifying the operation of existing contracts as yet uncompleted, and providing for the payment by the Government of the damages incurred by a contractor by reason of such suspension or modification; provided in each instance that full performance by the contractor under such contract, or under a series of contracts between the United States and the same contractor for substantially the same goods, shall not have been completed and final payment made thereunder. The supplemental contracts hereby authorized to be made include agreements of all kinds for all types and kinds of things and services necessary, appropriate or convenient for the prosecution of the war, or for the invention, development or production of, or research concerning any such things.

d. He may waive bid, payment, performance, or other bonds, and dispense with advertising for bids and competitive bidding.

4. Colonel Browning, or any person acting by delegation from him in the exercise of the powers hereby granted, shall have power to ratify and approve any contractual documents entered into or action taken by others, which he himself might have entered into or taken by virtue of the powers hereby granted.

5. The powers, authority and discretion hereby conferred upon Colonel Browning, or any portion or portions thereof, may be redelegated by him to

Plaintiff's Exhibit "Q"—(Continued)

whomsoever he may designate, with the power of redelegating such powers, [43] in whole or in part, to any officer or officers or civilian official or officials of the War Department. In any delegation of power or authority hereunder there may be included such terms and conditions, if any, as the person making such delegation may deem appropriate to ensure proper exercise of such power and authority in the interest of the United States and of the prosecution of the war.

/s/ ROBERT P. PATTERSON

Under Secretary of War

The memorandum of the Under Secretary of War, dated June 1, 1942, referred to in the above memorandum, reads as follows:

Memorandum For: Colonel Albert J. Browning, A.U.S.

Authority is hereby delegated to Colonel Albert J. Browning, A.U.S. to act for the Secretary of War and/or the Under Secretary of War in clearing, approving and taking other action in respect to Army Air Force contracts, change orders, supplemental agreements, advance payments, awards, letters of intent, letter contracts, letter purchase orders, leases, amendments of contracts and other contractual instruments; to approve sales of Army Air Force equipment, supplies and materials; and to approve new War Department Army Air Force contract forms and deviations from approved forms of Army Air Force contracts.

Plaintiff's Exhibit "Q"—(Continued)

The foregoing authority, or any portion thereof, is likewise delegated to such person or persons as may be designated in writing by Colonel Albert J. Browning, A.U.S.

The individual acting under the foregoing authority will so act as "Special Representative of the Under Secretary of War."

The foregoing authority shall remain in full force and effect until revoked by this office.

By direction of the Secretary of War:

/s/ ROBERT S. PATTERSON

Under Secretary of War

(107.8) Delegation of authority to Legal Assistant to Director of Materiel and to Chief, Legal Branch to approve contract forms.—Under date of 12 November 1943 the following memorandum was issued:

Memorandum For: Legal Assistant to the Director of Materiel and to the Chief, Legal Branch, Director of Materiel.

Subject: Delegation of Authority to Approve Contract Forms and Deviations from Approved Forms. [44]

The authority delegated to the Director, Purchases Division, by the Commanding General, Services of Supply, dated September 15, 1942 and the authority delegated to me by the Under Secretary of War, dated September 15, 1942 (in respect of matters relating to the Army Air Forces) to act for the Secretary of War or the Under Secretary

Plaintiff's Exhibit "Q"—(Continued)

of War in approving War Department contract forms and deviations from approved forms is hereby further delegated to the Legal Assistant to the Director of Materiel, and to the Chief, Legal Branch, Director of Materiel, Army Service Forces, or either of them, and to any person who for the time being may be acting in either capacity.

ALBERT J. BROWNING

Brigadier General, General
Staff Corps, Director, Pur-
chases Division.

(107.9) Authority delegated by these Procurement Regulations. These regulations to the extent, and only to the extent, that they actually confer authority upon the chiefs of the technical services and other officers or civilian officials of the War Department to exercise power to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon shall constitute a redelegation by the Commanding General, Army Service Forces of the authority delegated to him as set forth in paragraph 107.5, and by the Special Representative of the Under Secretary of War of the authority delegated to him, as set forth in paragraph 107.7. The authority granted as provided in the preceding sentence, of course, does not dispense with the necessity of obtaining any approval expressly specified in any paragraph of these procurement regulations (see e.g. para-

Plaintiff's Exhibit "Q"—(Continued)

graph 315.1). Authority conferred upon the chiefs of the technical services under any paragraph of these procurement regulations may be redelegated (with or without power of further redelegation) to such officer or officers or civilian official or officials as the chiefs of the technical services severally may direct, whether or not express mention of the powers of redelegation is made in any such paragraph, unless it is expressly provided in the paragraph that the power shall not be redelegated. The exercise prior to the date of these regulations of any such authority by any such officer or officers or civilian official or officials is hereby ratified and confirmed in all respects. [45]

(107.10) Since the regulations are generally declaratory of policy only, it will be necessary for the chief of each technical service to publish appropriate instructions on procedure.

(108) Applicability of these procurement regulations.

(108.1) Preliminary definitions.—(1) The term "procurement activities" as used in paragraph 108.2, includes all such activities except the acquisition and disposal of real estate so far as the latter are governed and regulated by AR 100-60, 100-61, 100-62 and 100-63. The term comprises, but is not necessarily limited to, the procurement of supplies, material and equipment and the procurement of construction work, including that on rivers and harbors.

Plaintiff's Exhibit "Q"—(Continued)

(2) The term "Army agencies", as used in paragraph 108.2, includes all personnel of the Army, except as indicated in paragraph 108.6. In particular, it includes the agencies referred to in paragraphs 108.4 and 108.5.

(3) The term "Appropriated funds", as used in paragraph 108.2, comprises all such funds, including such funds allocated to, as distinguished from appropriated to, the War Department; but does not include organizational, unit or similar funds.

(108.2) These procurement regulations are applicable to all procurement activities carried on by Army agencies with appropriated funds. If a project involves both a procurement activity and acquisition or disposal of real estate governed and regulated by the Army Regulations referred to in paragraph 108.1, these Procurement Regulations are applicable so far as the procurement activity is concerned and are inapplicable so far as the acquisition or disposal of real estate is concerned.

(108.3) Technical services and supply services.—Pursuant to Circular No. 30, Headquarters Army Service Forces, 15 May 1943, the designation of "supply services" is changed to "technical services". This change is being made in the Procurement Regulations as occasion arises to reprint pages for other reasons. In the meantime, the term "supply services" should be read as "technical services". [46]

Plaintiff's Exhibit "Q"—(Continued)

(108.4) Army Air Forces.—(1) The regulations have been issued with the approval of the Army Air Forces, and shall, unless otherwise specifically indicated, apply to the Army Air Forces.

(2) Whenever used herein, unless otherwise specifically indicated, the term "technical services" shall be deemed to include the Army Air Forces, and the term "chiefs of the technical services" shall be deemed to include the Commanding General, Army Air Forces. Likewise, the terms "Director, Purchases Division, Headquarters, Army Service Forces" and "Director, Readjustment Division, Headquarters, Army Service Forces", when used in connection with action to be taken in respect of the Army Air Forces, shall, unless otherwise specifically indicated, be deemed to refer to the Special Representative of the Under Secretary of War designated for that purpose.

(3) Except as specifically otherwise provided, all communications to the Army Air Forces or to the Commanding General, Army Air Forces, relating to procurement, should be addressed to the attention of the Procurement Branch, Materiel Division, Office of the Assistant Chief of Air Staff, Materiel, Maintenance and Distribution.

(108.5) Service Commands. These regulations are applicable to the procurement activities of the service commands. Where procurement is accomplished by a service command at the direction of the chief of a technical service or his duly authorized representative, the directions will contain

Plaintiff's Exhibit "Q"—(Continued)

references to the applicable paragraphs of the Procurement Regulations and will also contain supplementary instructions where appropriate. In such a case, for the purposes of these regulations, the procurement shall be regarded as procurement by the technical service concerned and the contract will be regarded as a contract of that technical service. In all other cases, the service command accomplishing the procurement shall act independently of any technical service and the term "technical service" and the term "service", as used in these regulations, shall be deemed to refer to the service commands and the term "chiefs of technical services" and "chiefs of services" shall be deemed to refer to the Commanding Generals of the Service Commands. In connection with this paragraph see paragraph 108.3 above.

(108.6) Procurement and contracting authority of commanding officers outside continental United States. In general, Commanding Officers in charge of [47] United States armed forces outside the continental United States and its territories and possessions including Alaska are not required, in connection with the procurement of supplies necessary to accomplish the mission confided in them, to comply with the procurement regulations or any other regulations, circulars or instructions or with any provisions or restrictions of the laws of the United States which may be applicable within the United States or any territory or possession thereof. This matter is more fully treated in Section 1 of the

Plaintiff's Exhibit "Q"—(Continued)

Circular No. 21, War Department, 1943. Likewise, Commanding Officers in charge of United States Armed Forces outside the continental United States but within the territories or possessions of the United States including Alaska, who are responsible directly to the War Department (that is the chief of staff), in connection with the procurement of supplies necessary to the accomplishment of the mission confided in them are authorized to disregard procurement regulations and other War Department regulations, restrictions, circulars and instructions, and when they find that to do so will facilitate the prosecution of the war, they are authorized to disregard the provisions of law relating to procurement; all subject however to (1) Title II of the First War Powers Act, 1941, (2) the restrictive provisions contained in Executive Order No. 9001 and (3) any law approved after December 18, 1941. This matter is more fully set forth in Section II of Circular No. 21, War Department, 1943.

(108.7) Procurement within the United States for armed forces abroad.—It is to be noted that the provisions of Circular No. 21, War Department, 1943, referred to in paragraph 108.6 have no application to procurement within the United States for armed forces abroad.

Section IV.

MISCELLANEOUS PROHIBITIONS

(109) Prohibition against voluntary service.

(109.1) No department or officer of the Government may accept voluntary service for the Government except in cases of sudden emergency involving the loss of human life or the destruction of property, or when a written statement is obtained that the service rendered will not be made the basis of a future claim against the Government for compensation. [48]

(110) Prohibition against use of troop labor.

(110.1) Except in cases of manifest necessity or when authorized by the Secretary of War, the labor of troops will not be used to enable the contractors to fulfill contracts.

(110.2) Whenever troop labor has been used—

(1) Authority therefor will be given in writing.

(2) A report enumerating in detail the service rendered will be forwarded to the Commanding General, Army Service Forces, Attention of Industrial Personnel Division.

(3) Full deduction will be made for the value of the service rendered.

(111) Conflicts between outside interests of officers or civilian employees and their official duties.

(111.1) Basis statute.—Section 41 of the United States Criminal Code (18 U.S.C. 93) provides as follows:

Plaintiff's Exhibit "Q"—(Continued)

"No officer or agent of any corporation, joint-stock company, or association, and no member or agent of any firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, joint-stock company, association, or firm, shall be employed or shall act as an officer or agent of the United States for the transaction of business with such corporation, joint-stock company, association, or firm. Whoever shall violate the provisions of this section shall be fined not more than \$2,000 and imprisoned not more than two years."

(111.2) Construction of basic statute.—The general language of Section 41 of the United States Criminal Code has been the subject of interpretation from time to time by The Judge Advocate General and by the Attorney General. The Judge Advocate General has been careful to point out that the question of construction presented "involves the construction and application of criminal statutes concerning which the Federal courts alone can speak with final authority." However, the substance of certain of those opinions is set forth as an aid in the construction of the statute:

(1) In Vol. 40, Op. No. 42, March 31, 1942, the Attorney General rendered an opinion concerning the use of a certain Army officer as a Liaison officer between a corporation and the War Department. It appeared [49] that the officer was also an officer and stockholder in the corporation. In holding that the basic statute would be violated if the officer

Plaintiff's Exhibit "Q"—(Continued)

acted in that capacity, the Attorney General stated in part:

"No man can serve two masters. The statute in question is clearly grounded on this assumption. Its manifest purpose is such that any attempt to reconcile it with the proposed employment runs into difficulties. Some of these difficulties are pointed out by The Judge Advocate General of the Army in his opinion on the question. Others are equally apparent.

"No matter how high are the motives of the Army Officer who advises, he is likely as a realistic matter to be consciously or unconsciously influenced by the fact that his actions may benefit the corporation of which he is an officer and a stockholder. To a degree his salary as an officer of the corporation would be affected by whether his advice leads the War Department to enter into a procurement contract with his company. To a larger degree his share in the earnings of the corporation as a stockholder would be affected by his advice."

(2) In two recent opinions (SPJGA 210.4 and SPJGA 250.7) rendered respectively on May 22, 1942 and March 28, 1942 The Judge Advocate General concluded that a person holding stock in a corporation may be a "person directly or indirectly interested in the pecuniary costs or contracts of such corporation", within the meaning of the statute. It is to be emphasized, however, that these two opinions relate solely to that issue and do not

Plaintiff's Exhibit "Q"—(Continued)

constitute opinions on what constitutes the "trans-
action of business" with the corporation within the
meaning of the statute. The construction of these
words, as contained in the statute, was the subject
of an opinion discussed in subparagraph (3) below.

(3) Under date of December 3, 1942 (SPJGA
1942/5072) the opinion of The Judge Advocate
General was requested with respect to the employ-
ment of a person as head of an agency which would
have complete charge of all phases of production
of certain items which were purchased by the War
and Navy Departments. The prospective head of
the agency had been for some years an officer of
a corporation which was one of the largest pro-
ducers of the items with which the agency would
be concerned, but at the time of the opinion was on
leave of absence without pay. It appeared, how-
ever, that under a retirement system established by
the corporation he would, if he lived to a specified
age, become entitled to certain annual payments.
[50] It further appeared that there was an under-
standing that if the agency were called upon to
transact business with the corporation in question,
such transactions would be conducted by other
officers or employees of the agency and that if
questions were presented not capable of final de-
cision by such other officers or employees, such
questions would be referred to higher authority for
decision. However, it also appeared that the head
of the agency would be called upon to determine
questions of general policy which would affect the

Plaintiff's Exhibit "Q"—(Continued)

corporation of which he was formerly an officer along with other producers. The Judge Advocate General concluded that Section 41 of the Criminal Code would not be violated by the employment of such an individual as head of the agency.

(4) In an opinion dated February 3, 1923, the Acting Judge Advocate General throws further light on what constitutes transacting business within the meaning of Section 41 of the Criminal Code. He had been requested to review the law in relation to the interest of the agents or officers of the United States in contracts with the United States with a view to the submission of proposed amendments thereto so as to permit the utilization of leading men in industry in an advisory capacity in connection with the planning and supervision of the procurement of war necessities. The opinion in part reads as follows:

"The statute is to be strictly construed and criminality attaches only when an individual, being an officer, or member of a business concern or directly or indirectly interested in the profits of the concern is employed or acts as agent of the United States for the transaction of business with that concern. The Act contemplates the actual transaction of business. The negotiation of a tentative contract by an agent of the Government with a business concern in which that agent is an officer, member, or in which he is interested, although not binding upon either party until executed, in accordance with

Plaintiff's Exhibit "Q"—(Continued)

statutory authority and an appropriation sufficient for the fulfillment thereof, would probably be considered a violation of the statute if the performance of the contract was thereafter entered upon. For this reason, in the preparation of procurement plans, no person should be permitted to have a part as agent for the United States in the negotiation of tentative contracts with a concern of which he is an officer, agent or member, or in which he is pecuniarily interested. * * * it is considered that acting in a solely advisory capacity without actual par- [51] ticipation in the negotiation or awarding of a contract or directing the awarding of a contract would not be a violation of Section 41 of the Federal Criminal Code."

(111.3) Regulations supplementary to basic statute.—The following regulations supplementary to the statute set forth in paragraph 111.1 are prescribed:

(1) No officer or employee of the War Department may act as an agent of the United States in advising, recommending, making or approving the purchase of supplies or other property, or in contracting therefor, if he would be admitted to share or receive directly or indirectly any pecuniary profit or benefit from such purchase or contract.

(2) No officer or civilian employee of the War Department shall be in direct charge of the negotiation of, or exercise authority for the final approval of, any contract with any corporation, joint-stock company, association or firm, if at any

Plaintiff's Exhibit "Q"—(Continued)

time during the period subsequent to December 7, 1936 such officer or civilian employee was employed by or engaged in a course of substantial non-Governmental business dealings with such corporation, joint-stock company, association or firm.

The Under Secretary of War is authorized to make exceptions to the regulation contained in subparagraph (2) above. In cases where the chief of a supply service feels that the application of the regulations contained in such subparagraph is impracticable, he should forward to the Director, Purchases Division, Headquarters, Army Service Forces, a request for an exemption. Such request should be accompanied by a full statement of the circumstances which are believed to make such exemption necessary. No exemption may be made from the provisions of the statute referred to in paragraph 111.1 or from subparagraph (1) of this paragraph.

Section V.

PROPOSALS FOR LEGISLATIVE ACTION
AND FOR EXECUTIVE ORDERS AFFECTING
PROCUREMENT

(113) General.—By Circular No. 59, War Department, 1942, the Legislative and Liaison Division, War Department, is charged with supervising the preparation of legislation requested by the War Department, with preparing reports to Committees of Congress and with the maintenance of liaison [52] necessary thereto. Said Circular No. 59

Plaintiff's Exhibit "Q"—(Continued)

further provides that the preparation of reports on legislation affecting the Army Ground Forces, the Army Air Forces or the Army Service Forces may be assigned to the command concerned.

(114) Legislation includes Executive Orders.—The terms "legislation" and "legislative", as hereinafter used in this Section refer to action taken or to be taken by Congress, other than the enactment of strictly appropriation items, and to all Executive Orders.

(115) Legislative Division, Office of the Under Secretary of War.—With the approval and by the authority of the Under Secretary of War, the Legislative Division, Office of the Under Secretary of War, is designated as the agency charged with the coordination within that Office, the Army Service Forces and the Army Air Forces, of all legislative matters affecting procurement or related functions.

(116) Proposals for Legislative Action affecting Procurement.

(116.1) Except as specifically otherwise provided in paragraph 116.2, all proposals for legislative action affecting procurement or related functions, originating from any source whatsoever, will be referred to the Legislative Division, Officer of the Under Secretary of War, for coordination.

(116.2) All such proposals, other than proposals for Executive Orders, originating from sources outside the Office of the Under Secretary of War, the Army Service Forces or the Army Air Forces, will

Plaintiff's Exhibit "Q"—(Continued)

be referred to the Legal Branch, Purchases Division, Headquarters, Army Service Forces. The Legislative Section of that Branch will promptly review such proposals to determine which are of sufficient importance to the Office of the Under Secretary of War, the Army Service Forces, Army Air Forces, or any of them to warrant further consideration. Such of the proposals as warrant such consideration will be referred directly to the Legislative Division, Office of the Under Secretary of War, for coordination.

(117) Action of Legislative Division.—The Legislative Division, Office of the Under Secretary of War, will, with respect to such proposals originating within the Office of the Under Secretary of War, the Army Service [53] Forces, or the Army Air Forces,—

(1) Take all necessary action to secure the views of those individuals and elements within the Office of the Under Secretary of War, the Army Service Forces and the Army Air Forces, whose responsibilities would be affected by such legislative action.

(2) Refer any questions regarding the form of the proposed legislative action to the Legal Branch, Purchases Division, Headquarters, Army Service Forces, for consideration and report.

(3) Make all necessary arrangements for proper coordination with other Government departments and agencies whose functions would be affected.

(4) If it is determined by proper authority to initiate such legislative action, coordinate the mat-

Plaintiff's Exhibit "Q"—(Continued)
ter with the Legislative and Liaison Division, War Department.

(5) Take any other necessary or appropriate action in connection therewith.

With respect to such proposal originating from sources outside the Office of the Under Secretary of War, the Army Service Forces or the Army Air Forces, Legislative Division, Office of the Under Secretary of War will, upon receipt of such proposals, take the action described in subparagraphs (1), (3) and (5) above.

(118) Congressional Hearings. — Arrangements for appropriate representation from the Office of the Under Secretary of War, the Army Service Forces and the Army Air Forces, at Congressional hearings on legislative proposals affecting procurement or related functions will be made through the Legislative Division, Office of the Under Secretary of War.

(119) Reports on Legislative Proposals.—All requests from official sources, within or without the War Department, for reports on legislative proposals, affecting procurement or related functions will, upon receipt by the Office of the Under Secretary of War, the Army Service Forces or the Army Air Forces, be referred to the Legislative Division, Office of the Under Secretary of War, which will secure reports from the appropriate sources within the aforesaid elements of the War Department and will forward such reports, after approval thereof

Plaintiff's Exhibit "Q"—(Continued)
by property authority, through established channels
to the sources of the requests. [54]

1-21-44 (10-15-43; 9-24-43)

305 PR 3

Pr 3 Contracts

CONTRACTS

Section I

GENERAL

(301) Recission of regulations. — Army Regulations 5-200, dated January 2, 1940, as amended, and all other prior directives and instructions of whatsoever nature relating to the making of contracts are hereby rescinded.

(301.1) Compliance with Procurement Regulation No. 3.—Unless otherwise specifically provided, compliance with any provision of Procurement Regulation No. 3 or of any amendment thereto which requires a change in contract procedure or in any contract provision shall not be mandatory until thirty days after the issuance of such regulation or amendment.

(302) Definitions.—As used in these Procurement Regulations the following terms will have the meanings assigned to them in the following paragraphs:

(302.1) United States and Government.—These terms are synonymous and include the War Department.

(302.2) Contractor.—A contractor is any per-

Plaintiff's Exhibit "Q"—(Continued)

son, partnership, company, or corporation (or any combination of these) which is a party to a contract with the United States.

(302.3) Contracting officer.—(1) A contracting officer is an officer or civilian official of the War Department who has been appointed by any one of the following persons, or by their direction, or in accordance with such orders and regulations as they may prescribe for their respective commands, to execute contracts on behalf of the United States:

- (a) the Secretary of War;
- (b) the Under Secretary of War;
- (c) the Commanding General in a Theatre of Operations;
- (d) the Commanding General, Army Air Forces;
- (e) the Director, Purchases Division, Army Service Forces;
- (f) the Chief of any Technical Service.

(2) Unless otherwise specifically provided, the words "the contracting officer", when used in these Procurement Regulations or in any [55] existing or future contract, supplemental agreement or change order, are construed to include:

- (a) his duly appointed successor or authorized representative;
- (b) any and all contracting officers, acting within the scope of the orders respectively appointing them contracting officers.

(3) Representatives may be designated as follows:

Plaintiff's Exhibit "Q"—(Continued)

(a) the Chief of a Technical Service may designate any officer or civilian official to act as representative of the contracting officer or his duly appointed successor;

(b) a commanding officer may designate any contracting officer assigned to his command or station to act as representative of any other contracting officer assigned to the same command or station, or of a contracting officer's duly appointed successor so assigned;

(c) a contracting officer, his duly appointed successor, and any representative designated pursuant to (a) or (b) of this subparagraph (3), may respectively designate any officers or civilian officials to act as their representatives.

(4) A designation authorized by subparagraph (3) may be made by instructions referring to particular contractual instruments or classes of instruments, and may, to the extent not specifically prohibited by the terms of the contractual instrument involved, empower the representative to take any or all action thereunder which could lawfully be taken by the contracting officer. In no event, however, shall a representative, by virtue only of his designation as such, be empowered to execute any contract or supplemental agreement (as distinguished from change order). Of course, if the representative is a contracting officer, he may, pursuant to the order appointing him a contracting officer, execute contracts or supplemental agreements.

Plaintiff's Exhibit "Q"—(Continued)

(5) Any person duly appointed a contracting officer in accordance with subparagraph (1) above, with authority to execute contracts on behalf of a particular technical service, service command or the Army Air Forces may execute contracts on behalf of any other service when the necessary funds, if any, have been made available.

(6) All action heretofore taken which would have been valid if this paragraph 302.3 had then been in effect, is hereby ratified and confirmed. [56]

310 Pr 3

Pr 3 Contracts

Army Specialized Training Division, Office, Director of Military Training:

Contract for Training in Medicine and Dentistry

Contract for Training in Veterinary Medicine

Training Unit Contract

Special Services Division, Office, Director of Personnel:

Contract for Correspondence Instruction

Contract for Physical Distribution of 16mm
Films

Contract for Physical Distribution of 35mm
Films

Contract for Production Services and Articles,
Materials, Equipment and Facilities in Con-
nection with Production of Films

Government Job Order and Contractor's Accep-
tance under Contract for Productions Ser-
vices, etc.

Plaintiff's Exhibit "Q"—(Continued)

Contract for Radio and Phonograph Recordings
Service Commands:

General and Medical Laundry Contracts (see
Memorandum No. S5-93-43, Office of The
Adjutant General, May 22, 1943)

(304.2) Contract.—As used in this Section, the term "contract" means any contract except supplemental agreements and change orders and except those contracts referred to in paragraphs 720 to 725, 1014 and 1015.

(304.3) Price.—As used in this Section, the term "price" means in the case of a lump-sum contract (or supplemental agreement or change order relating thereto), the stated price, and in the case of a cost-plus-a-fixed-fee contract (or supplemental agreement or change order relating thereto), the estimated cost plus the fixed-fee.

(304.4) Technical Service.—Whenever authority is conferred by this section upon a technical service, that authority may be exercised by the chief of the technical service or by any officer or officers or civilian official or officials whom he may designate, subject to such regulations as he may prescribe.

(305) Making and approval of awards of contracts, supplemental agreements and change orders.

(305.1) Authority of technical services to make awards.—All awards of contracts, supplemental agreements and change orders, other than those described in paragraph 305.2, may be made by the

Plaintiff's Exhibit "Q"—(Continued)

technical service concerned without approval of higher authority. [57]

(305.2) Awards requiring the approval of Director, Purchases Division.—(1) The following awards must be submitted for approval to the Director, Purchases Division, Headquarters, Army Service Forces:

(a) Awards of contracts (other than Architect-Engineer Management or similar contracts) involving a price of \$5,000,000 or more, and awards of supplemental agreements and change orders which have the effect of increasing the price of contracts (other than Architect-Engineer, Management or similar contracts) by \$5,000,000 or more.

(b) Awards of Architect-Engineer, Management or similar contracts when the construction contracts to which they relate involve a price of \$5,000,000 or more, and awards of supplemental agreements and change orders affecting Architect-Engineer, Management, or similar contracts when the changes being concurrently made in the construction contracts to which they relate have the effect of increasing the price of the construction contracts by \$5,000,000 or more.

(2) If it is desired to execute a preliminary contract, as defined below, with a particular contractor, and the choice of contractor presents no real alternative, it shall not be necessary to obtain any approval pursuant to sub-paragraph (1) above. Such approval will, however, be obtained prior to the execution of the final definitive agreement, if

Plaintiff's Exhibit "Q"—(Continued)

required by subparagraph (1). The term "preliminary contract", as used in this subparagraph (2), refers to any type of tentative agreement (as, for example, a letter purchase order of the type set forth in paragraph 1307) which, it is contemplated, will be subsequently superseded by a final definitive agreement which will obligate War Department funds in an estimated amount at least twice the amount obligated by the tentative agreement.

(305.3) Submission of contract, supplemental agreement or change order in lieu of award.—In lieu of submitting an award for approval under paragraph 305.2, the contract, supplemental agreement or change order may itself be submitted for approval and manual execution by the Director, Purchases Division, Headquarters, Army Service Forces.

(306) Making and approval of contracts, supplemental agreements and change orders.

(306.1) Authority of technical services to make contracts.—A contract may be made by the technical service concerned without approval of higher authority (provided that approval of the award has been obtained, if such approval is required under paragraph 305.2, [58] and the contract substantially embodies the award as approved), if—

(1) The contract is written on a standard form of contract; or

(2) The contract (a) complies with the requirements of Section VIII of this procurement Regu-

Plaintiff's Exhibit "Q"—(Continued)

lation No. 3 and (b) does not contain any provision or involve any matter of policy which, in the opinion of the technical service, should be considered and passed upon by authority higher than the technical service.

(306.2) In determining whether a contract provision or matter of policy should be considered and passed upon by higher authority, consideration shall be given by the technical service to the following factors among others:

(1) Whether there is involved a conflict with a policy theretofore approved by higher authority;

(2) Whether there is involved a decision on an important question of policy which has not theretofore been passed upon by higher authority;

(3) Whether there is involved a decision on any matter in which uniformity among the several technical services appears to be desirable;

(4) Whether there is involved a decision on an important or doubtful question of law.

(306.3) Authority of technical services to make supplemental agreements and change orders.—Except as provided in paragraph 306.5 and in paragraphs 308-A, 308-G, a supplemental agreement to change order modifying a contract (other than an Architect-Engineer, Management or similar contract) may be made or issued by the technical services concerned without approval of higher authority (provided that approval of the award has been obtained if such approval is required under the provisions of paragraph 305.2 and the supple-

Plaintiff's Exhibit "Q"—(Continued)

mental agreement, or change order substantially embodies the award as approved), if—

(1) The technical service had authority to make the original contract pursuant to paragraph 306.1, or the technical service did not have such authority but obtained approval pursuant to paragraph 306.4; and

(2) The provisions and features of the supplemental agreement or change order are themselves such that the technical service would have authority to include them in an original contract pursuant to paragraph 306.1.

Changes in Architect-Engineer, Management or similar contracts may also be made by the technical service concerned, provided that the requirements of [59] subparagraphs (1) and (2) above are satisfied and provided that the change being currently made in the construction contract to which the Architect-Engineer, Management or similar contract relates does not necessitate approval. Supplemental agreements converting cost-plus-a-fixed-fee contracts to a fixed price basis will be governed by the provisions of paragraph 306.5.

(306.4) Contracts, supplemental agreements and change orders requiring approval of Purchases Division.—The approval of the Purchases Division, Headquarters, Army Service Forces shall be obtained, as herein provided, in connection with all contracts other than those specified in paragraph 306.1, and all supplemental agreements and change orders other than those specified in paragraph 306.3.

Plaintiff's Exhibit "Q"—(Continued)

Where approval is necessary solely because one or more provisions of the contract, supplemental agreement or change order fail to comply with the requirements of Section VIII or present a matter or matters of policy which should be considered by authority higher than the technical service, the necessary approval may be obtained, prior to execution of the instrument on behalf of the technical service, on submission of the contract or the material provisions thereof to the Legal Assistant to the Director of Materiel or the Chief, Legal Branch, Director of Materiel, Headquarters, Army Service Forces, whose approval will be signified by indorsement, memorandum, letter or telegram in response to the request for approval; or on submission of the contract, supplemental agreement or change order, after execution on behalf of the technical service, for approval and manual execution by the Director, Purchases Division. In every other instance the contract, supplemental agreement or change order must be submitted, after execution on behalf of the technical service, for approval and manual execution by the Director, Purchases Division. Upon receipt of requests for the approval of deviations from the contract clauses set forth in paragraphs 365.1-365.9, the Legal Assistant to the Director of Materiel or the Chief, Legal Branch, Director of Materiel, Headquarters, Army Service Forces, will attend to all necessary clearances with the Contract Insurance Branch, Special Financial Services Division, Headquarters, Army Service Forces. [60]

Original for Vendor

[Printer's Note: Reverse side of Purchase Order. Plaintiff's Exhibit "R".]

CONDITIONS AND INSTRUCTIONS

Acknowledgment — Immediate acknowledgment required, with full delivery information.

Title—The material to be furnished hereunder is for the benefit of the United States Government and title thereto will pass to the United States Government upon delivery, subject to subsequent inspection and acceptance of the material; if specifications are not met, material may be returned at seller's expense.

Inspection—The material to be furnished on this order shall be subject to Olympic expediting and inspection at the seller's plant.

Payment Discount—Payment is contingent upon acceptance of material. Discount period shall be calculated from date of an acceptable invoice.

Drafts—Will not be honored.

Bill-of-Lading—Unless otherwise agreed all rail or common carrier motor truck shipments must be made collect. The original and two copies of collect commercial Bill-of-lading showing shipper's number endorsed on the face "Military Property of the United States, for Military Use, subject to conversion to Government Bill-of-lading at destination," must be mailed to the consignee as soon as original Bill-of-lading is receipted by the Carrier. For all other shipments, a comparable paper must accompany invoice.

Trucking—Interstate truck shipments must be made by carrier authorized under the Motor Carrier Act of 1935. If made by unlicensed carrier shipment will be subject to rejection.

Packages—Must bear buyer's order number and show gross, tare and net weights and/or quantity. No charge allowed by the buyer unless otherwise agreed.

Cartage—No charge allowed by buyer unless otherwise agreed.

Patents—Seller warrants that the use or sale of the material delivered hereunder will not infringe the claims of any patent covering the material itself; but does not warrant against infringement by reason of the use thereof in combination with other materials or in the operation of any process.

Taxes—The seller agrees to pay any taxes imposed by law upon or on account of the within material, unless otherwise agreed.

All items are for use on a United States Government project and therefore may be exempted from Federal excise taxes. The buyer will furnish an exemption certificate in the form approved by the Bureau of Internal Revenue where the seller has specifically stated in his bid the amount of Federal taxes otherwise applicable to the purchased article or its constituent parts.

This purchase is being made for resale and has been approved by the United States, and neither the Washington retail sales tax nor the Washington compensating tax is applicable thereto.

Non-Discrimination—The supplier or contractor, in performing the work herein specified, shall not discriminate against any worker because of race, creed, color or national origin.

Returnable Containers—Government regulations prohibit payments for returnable containers; therefore, any billing for such containers must be made in memorandum only and not for reimbursement. The memorandum should show return shipping instructions.

Assignment—Any contract resulting from this order shall be assignable to the United States Government.

Labor—The seller warrants that in the performance of this order it will comply with the Fair Labor Standards Act of 1938, and any amendments thereto.

Renegotiation—If this order involves a fixed price or lump sum in excess of \$100,000.00, it is subject to the attached provisions covering renegotiation pursuant to the Sixth Supplemental National Defense Appropriation Act, 1942.

Price Regulation—By accepting this order the Seller warrants that no price or other charge to the Buyer hereunder will be in violation of the price control regulations of the United States Government.

Domestic Articles—Seller warrants that food or clothing sold hereunder has been produced or manufactured in the United States substantially all from articles, materials or supplies mined, produced or manufactured in the United States.

PLAINTIFF'S EXHIBIT "S"

United States of America

War Department

Washington, 9 June, 1944

I Hereby Certify that the attached sheet, containing among other things, paragraphs 703.06 and 703.09 of Chapter VII, "Claims and Claims Litigation, Contracts, Methods of Purchase", Orders and Regulations, Corps of Engineers, U. S. Army, last revision 1 February 1943, is a true extract of such regulations issued by the Office of the Chief of Engineers, Washington, D. C., and on file in said office. I further certify that the contracting authority of Division Engineers, of the Corps of Engineers, War Department, described in the regulations above referred to is now in full force and effect, said authority having first been granted by Office of the Chief of Engineers' Circular Letter (Administrative No. 45) (Contracts and Claims No. 11), dated 22 December, 1941, the original of which is on file in the Office of the Chief of Engineers, Washington, D. C. I further certify that the attached copy of a letter dated 1 March 1943 (File reference A-43-b) from J. C. Marshall, Colonel, Corps of Engineers, District Engineer, Manhattan District, to Lt. Col. Franklin T. Matthias, Corps of Engineers, at Hanford Engineer Works, Pasco, Washington; and that the attached copy of a letter dated 1 January 1944 (File reference 161 EIDM SA) from F. T. Matthias, Lt. Col., Corps of Engineers, to Major Richard F. Ebbs, Corps of

Engineers, Executive Officer, Hanford Engineer Works, Pasco, Washington, are true copies of records on file in the United States Engineer Office, Hanford Engineer Works, Pasco, Washington; and I further certify that the authorities described in the foregoing communications are now in full force and effect and have been in full force and effect from their respective dates.

H. C. KILPATRICK JPT

Major, Corps of Engineers,
Executive Officer. JD

I Hereby Certify that Major H. C. Kilpatrick, who signed the foregoing certificate, is the Executive Officer to the Chief of Engineers, and that to his certification as such full faith and credit are and ought to be given.

In Testimony Whereof I, Henry L. Stimson, Secretary of War, have hereunto caused the seal of the War Department to be affixed and my name to be subscribed by the Assistant Chief Clerk of the said Department, at the City of Washington, this 9th day of June, 1944.

[Seal] HENRY L. STIMSON,

Secretary of War

By J. C. COOK,

Assistant Chief Clerk

War Department Form No. 7 [68]

Extract from Chapter VII, "Claims and Claims Litigation, Contracts, Methods of Purchase," Orders and Regulations, Corps of Engineers, U. S. Army, last revision 1 February 1943.

703.06. Designation of contracting officers. a. General.—Public funds under the control of the Corps of Engineers shall be obligated by contracts by such officers and employees only as are specifically designated as “contracting officers.”

b. Officers who are contracting officers by virtue of positions.—District Engineers, Division Engineers, and the President of the Mississippi River Commission are contracting officers by virtue of positions held.

c. Power of redelegation of contracting officer, authority.—Except as may be specifically stated in a designation of a contracting officer by the Chief of Engineers, only District Engineers and Division Engineers are authorized to redelegate, subject to the provisions of subparagraph d, below, any part of their contracting authority. Such power of redelegation shall not be construed to include the redelegation of power to approve contracts.

d. Redelelegation of contracting officer authority.—It is essential that District Engineers and Division Engineers avail themselves of the power of delegation and it is expected that they will do so. In the redelegation of contracting officer authority, such officers should give contracting officers such contractual authority as is necessary for their expeditious and efficient functioning, not to exceed that possessed by District Engineers, where the size of the job and the qualifications of personnel so warrant.

e. President of the Mississippi River Commission.—The President of the Mississippi River Com-

mission shall have contracting officer authority equivalent to that of a Division Engineer.

f. Letters of designation.—Officers and employees designated as contracting officers by District and Division Engineers shall be designated as such by letter stating the period and the limit of authority granted, and such letter shall be exhibited by the officer or employee if required as evidence of his authority. Such designations may be made for a limited or unlimited period of time but shall delineate the contracting officer's authority by stating the monetary limit on his authority, the types of contracts to be executed, etc. Such designations may be revoked by the officer by whom issued, or his successor. A copy of all such letters of designation and revocation and prompt notice of the termination of such authority due to transfer, death or other causes shall be promptly transmitted to the Chief of Engineers, Attention: [59] Contracts and Claims Branch, Administrative Division.

g. Contracts to be executed in person.—Contracting officers shall personally sign contracts entered into by them on behalf of the United States and cannot delegate this authority to others.

703.09. The award of contracts, change orders, and supplemental agreements thereto.—General.—The award of contracts, change orders, and supplemental agreements hereinafter referred to in this paragraph as "contracts", may be made as follows:

(1) District Engineers are authorized to award all contracts not exceeding \$3,000,000.

(2) Division Engineers are authorized to award all contracts of less than \$5,000,000 and to authorize contracting officers under their jurisdiction, including District Engineers, to award contracts over \$3,000,000, and less than \$5,000,000.

(3) The President, Mississippi River Commission, is authorized to award contracts of less than \$5,000,000.

In Reply Refer To

War Department
United States Engineer Office
Manhattan District
P. O. Box 42
Station F
New York, N. Y.
A-43-b

March 1, 1943

Received Mar. 31, 43, Office of Area Engineer,
Hanford Engineer Works, Pasco, Wash.

[In margin]: CE 201 (Matthias, F.T.)

Subject: Delegation of Administrative and Contractual Authority as Area Engineer:

To: Lieutenant Colonel Franklin T. Matthias,
Corps of Engineers, Area Engineer, Hanford
Engineer Works, Pasco, Washington.

1. As Area Engineer for the Hanford Engineer Works of the Manhattan Engineer District, authority is hereby delegated to you as follows:

a. To act as Contracting Officer for the Manhattan Engineer District with authority to make

procurements and to negotiate and sign contracts for performance within the Hanford Engineer Works and contracts emanating within the Hanford Engineer Works for performance elsewhere, as follows:

(1) All informal contracts.

(2) All formal contracts, except those involving plant expansions, in amounts not exceeding \$3,000,000.00.

b. To supervise the performance of all contracts signed by yourself or by other contracting officers of the Manhattan Engineer District for performance within the Hanford Engineer Works, and to take all action and to make all decisions in connection therewith, including the approval [70] of subcontracts and third party equipment rental agreements, which are required to be given by the Contracting Officer or by the District Engineer.

c. To authorize and approve travel by civilian and military personnel; to certify vouchers and to perform all other administrative functions as are necessary for the proper administration of the Hanford Engineer Works.

2. This delegation of authority shall remain in effect until revoked. The authority contained in paragraph a is personal to you and may not, in your absence, be redelegated to others. The authority contained in paragraphs b and c may, within your discretion, be further delegated to such civilian or military assistants as may be necessary to carry out the work. Any such authority redelegated to

others must be in writing, and a copy thereof furnished to this office.

J. C. MARSHALL

Colonel, Corps of Engineers
District Engineer.

Dispatched Mar. 25, 1943, Manhattan Engineer District, New York, N. Y.

In Reply Refer to 161 EIDM SA

War Department
United States Engineer Office
Hanford Engineer Works
P. O. Box 550
Pasco, Washington

1 January 1944

Subject: Delegation of Authority.

To: Major Richard F. Ebbs, Corps of Engineers, Executive Officer, Hanford Engineer Works, Pasco, Washington.

1. Pursuant to the authority vested in the Area Engineer, Hanford Engineer Works, Pasco, Washington by letter of the District Engineer, Manhattan District dated March 1, 1943, Subject: "Delegation of Administrative and Contractual Authority as Area Engineer," authority is hereby delegated to you as follows:

a. To supervise the performance of all contracts signed by the Area Engineer or by other contracting officers of the Manhattan Engineer District for

performance within the Hanford Engineer Works, and to take [71] all action and to make all decisions in connection therewith, including the apuroval of subcontracts and third party equipment rental agreements which are required to be given by the Contracting Officer or by the District Engineer.

b. To authorize and approve travel by civilian and military personnel: to certify vouchers and to perform all other administrative functions as are necessary for the proper administration of the Hanford Engineer Works.

2. This delegation of authority shall remain in effect until revoked.

F. T. MATTHIAS

Lt. Col., Corps of Engineers
Area Engineer [72]

PLAINTIFF'S EXHIBIT "T"

OP-55 5M 6-43 Prompt

OLYMPIC COMMISSARY CO.

Hanford Engineer Works

Date 12-13-43

Req. No. 19609

RECORD OF PURCHASE

Order No. OCC 3881

Material Milk (Unit #1)

Quotations Received— Name of Bidder	Promised Shipping Date	Price Quoted
McClintock-Trunkey Company, Spokane, Washington	Dec. 20, 1943	\$5118.75
Central Grocery Company, Yakima, Washington	Dec. 20, 1943	\$5125.00
Interior Grocery Company, Walla Walla, Wash.	Dec. 23, 1943	\$5125.00
Pacific Fruit & Produce Com- pany, Walla Walla, Wash.....	Dec. 23, 1943	\$5125.00

Quotation Accepted—Name of Bidder	Reason Supplier Selected
McClintock-Trunkey Com- pany, Spokane, Wash.	[x] 1. Lowest Price Four Bids
	[] 2. Early Delivery
	[] 3. Better Quality
	[] 4. Required Design
	[] 5. Only Available Source Known
Amount: \$5118.75	
F.O.B. Hanford,	[] 6. Price Agreement
Washington	[] 7. As Per Contract
Net 30 days	[] 8.

Final Approvals:

Correct: R W

For Olympic Commissary Co.

L. R. BELT

By J. H. BUNKER (Signed)

For E. I. Du Pont De Nemours & Co.

By C. D. McCULLAH

[Marginal Note]:

(Signed)

(Initials—not legible)

For U. S. Government

By HARRY R. KADLEC (Signed)

Copy for U. S. Government—Hanford, Wash.

Plaintiff's Exhibit "T"—(Continued)

PURCHASE ORDER

Order No.

385

12-20-43

OCC-3881

McCLINTOCK-TRUNKEY COMPANY

Dec. 23, 1943

S 119 Stevens Street

Dec. 20, 1943

Spokane, Washington

Dec. 20, 1943

Vendor's Invoice Date	Vendor's Invoice No.	Car No.	Weight of Shipment	Net Amount of Invoice	Freight All'd or Charged	APV No.
Accomplished			Accomplished			
Bu Vou. 1653			Bu Vou. 17455			

1	1250 cs.	48 talls	Federal Milk	@ 4.095 cs.	\$5118.75
---	----------	----------	--------------	-------------	-----------

Confirmation:—Do Not Duplicate

Terms:—30 days net

A variance in quantities not to exceed 10% of the stated amount will be accepted as compliance with the terms of the purchase order.

- | | |
|----------------------|--------------------------------|
| 1. Lowest Price | 5. Only Available Source Known |
| 3* 2. Early Delivery | 6. Price Agreement |
| 3. Better Quality | 7. As Per Contract |
| 4. Required Design | 8. |

[Printer's Note: * Figure in longhand.]

Ship as Follows:

To Camp Manager, Olympic Commissary Co.,

Hanford Engineer Works, Hanford Washington. Unit #1.

Via Rail Car

F.O.B. Terms Hanford, Washington

Supplier Selected Because of Reason Number (1) Above

Issued by

Item No.	Account	Issued by
		Approved for Olympic Commissary Co.
		J. H. BUNKER
(Initials not legible)		Approved for E. I. Du Pont De Nemours & Company
		J. M. LENLEY
		Approved for U. S. Government
		E. C. SCHULTE

Sheet #1

Copy for U. S. Government

OCC-3881

Plaintiff's Exhibit "T"—(Continued)

OOC-13 279-289

OLYMPIC COMMISSARY CO.

Information for which space is here provided must be supplied by shipper or invoice will be returned and discount calculated from date correct invoice is received.

Consigned to Unit #1
 Shipped Via Drop Shipment
 Car No. and Initial.....
 Originating Point.....
 Shipping Weight.....Lbs.
 Bill of Lading No.....
 Prepaid or Collect.....
 Terms:
Per Cent.....Days.....Days
 Net

Delivery
 F.O.B.....

Received Expense Bill Must
 Accompany all Charges for
 Transportation

Olympic Vou. No.....

Olympic Order No. OCC-3881

Date 12/23/43

Hanford Engineer Works

P. O. Box 23

Pasco, Washington

Seller's No. 17241

Bought of McClintock-Trunkley
 Company

Street and No. So. 119 Stevens

City and State Spokane, Washington

Original Bill of Lading, and Two
 Copies must accompany this invoice
 or must be furnished promptly after
 receipt of shipping instructions.

Item. No.	Quantity	Description	Points	Unit Price	Amount
	1250 cs	48/Tall Federal Milk	60,000	4.10	* 5125.00

M.R.

Vendors Invoice	5125.00
-----------------	---------

Less adj. due to overcharge in unit price. Should be 4.095	* —6.25
--	---------

Amount of Invoice	5118.75
-------------------	---------

JM

Final Approval for Olympic By AM	Approved for Olympic for Payment Only By B 1	Approved for Du Pont By	Approved for Dupont By
For Olympic	Audit Schedule	For Du Pont Initials Date	Cash Discount
F	Extensions and Foot- ings Verified		
G	Entered in Invoice Register		Freight
JM	Prices and Delivery Terms Compared with Purchase Order	FH	Net Amount of Invoice
Mat'l	Report No.	FH	5118.75
Rec'd As	13608		Check No.
Ordered			Jan 4-1944
JHW	Transportation Charge		39.63
	Approved		MTM

Plaintiff's Exhibit "T"—(Continued)

OP-21002—Ten Part

13608

OLYMPIC COMMISSARY CO.

RECEIVING REPORT

Consignor: McClintock Trunkey Co.

Order Ref. OCC 3881

Sh'p'd from Spokane, Wn.

Date 12/26/43

Car Initial & Number.....

Freight Bill No.....

Freight Charges.....

Via DuPont Trk

Item No.	Quantity	Description	Weight
	1250 cs	Milk, Evaporated 48/ talls pr cs	

Differences between materials ordered and received 12/31/43 hr
covered by material exception report No.

Lindeman

.....
Olympic Checker

Approved:

The Above Material Re-
ceived, Inspected and Ac-
cepted by Olympic Com-
missary Co.

R. GREINER
Olympic Representative

.....
Du Pont Representative

Item No.	Charge	Originator of Pur- chase Req
	MS - 25	Williamson

Approved in Accordance
with the Requirements of
the Administrative Audit
Manual

Disposition of
Material
#1, Hanford

1

.....
U. S. Government
Representative

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL
CONTRACT VOUCHER

D. O. Ven. No. 25713
Pay. Ven. No. D 1653

**GENERAL ACCOUNTING
OFFICE PREAUDIT**

Certified for payment in the
sum of \$

Comptroller General of the
United States

By

U. S. WAR DEPT. U. S. ENG. OFF. MANHATTAN DIST. OAK RIDGE

~~HANFORD, PAID BY~~

PAID BY

Voucher prepared at HANFORD, WASHINGTON MAR 2 1944
(Give place and date)

C. VANDEN D'OLCK
Lt. COL. C.E. U.S.A.
211-500

THE UNITED STATES, Dr.,

To E. I. DUPONT DE NEMOURS & COMPANY

(Payee)

Address P. O. Box 429 PASCO, WASHINGTON

Payee's Account No. D 1553

(For use of Paying Office)

No. and Date of Order	Date of Delivery or Service	Articles or Services (Enter description, item number of contract or general supply schedule, and other information deemed necessary) Terms % Discount Cash days	Quantity	UNIT PRICE		AMOUNT	
				Cent	Per	Dollars	Cts.
		Brought forward from continuation sheet(s) PET'S AGREEMENT ATTACHED					
I certify that I am familiar with the provisions of Section 35 of the Federal Penal Code, as amended (Title 18, United States Code, Section 80), and that I have not, nor has anyone acting for or in my behalf or for or in behalf of the firm or company which I represent committed any act or offense denounced by the said section 35 in connection with the transaction for which reimbursement is sought on the voucher.							Non Payment Voucher, See Attached 1035
ORIGINAL SIGNED BY J. W. SIMMONS Ass't Chief Acct'g Officer							

Shipped from to Weight Government B/L No. Total 22,258.44

(Payee must NOT use this space)

E. I. DU PONT DE NEMOURS & CO.

ORIGINAL SIGNED BY J. W. SIMMONS Ass't Chief Acct'g Officer Account verified, correct for 22,258.44

Contract No. W-7412 eng-1 Date 12/1/42 Reg. No. Invoice Rec'd

22,258.44

MEMORANDUM

Contract not on file in O. S.

W. BARRETT 1st Lt. C.E.
Asst. Administrative Officer

ACCOUNTING CLASSIFICATION (for completion by Administrative Office)

Appropriation, limitation, or project symbol		Appropriation title		Limit'n or Profit Amount	Appropriation Amount	
210/42141-----		E-P-62-E-A-S-1940-44-6-4562-P110-10			22,258.44	
212/40905		ENGINEER SERVICE ARMY 1940-44 8 31110 P430-10 A 0905-24				
Allotment symbol	Amount	Obligations liquidated	COST ACCOUNT		OBJECTIVE CLASSIFICATION	
			Symbol	Amount	Symbol	Amount
			3	135		

Paid by Check No. Non-payment Voucher dated 19. for \$ 22,258.44 (on Treasurer of the United States in favor of payee named above.)
Cash, \$ Do not issue check 19. Payee (sign original only)

* When a voucher is placed or maintained in the name of a company or corporation, the name of the person within the company or corporation must, as well as the name of the company or corporation, be indicated in the "Payee" column. The name of the person must be the name of the person who is to be paid, and the name of the company or corporation must be the name of the company or corporation to which the payment is to be made. The name of the person must be the name of the person who is to be paid, and the name of the company or corporation must be the name of the company or corporation to which the payment is to be made.

No extras

Standard Form No. 1035—Revised

Form approved by

Comptroller General, U. S.

June 8, 1937

(Gen. Reg. No. 51, Sup. No. 7)

PUBLIC VOUCHER FOR PURCHASES, AND SERVICES
OTHER THAN PERSONAL

CONTINUATION SHEET

U. S. HANFORD ENGINEER WORKS Sheet No. of Bureau Voucher No. 1653
(Department, Bureau, or Establishment.)

ARTICLES OR SERVICES

(Enter description, Item Number of
Contract or General Supply Sched-
ule, and other Information deemed
necessary)

No. and Date of Order APV #	Date of Delivery of Service Check #	Quantity	Unit Price		Amount Dollars Cts.
			Cost	Per RPG #	
17455	25198			53½	5,108.19
18703	25568			53½	17,150.25

Sheet #1

Total 22,258.44

Note.—This form to be used as a "Continuation Sheet" where more than one sheet is required, carry-
ing forward the total or totals to, or summarizing them upon Form No. 1034.

Plaintiff's Exhibit "T"—(Continued)

Standard Form No. 1035—Revised

Form approved by

Comptroller General, U. S.

June 8, 1937

(Gen. Reg. No. 51, Sup. No. 7)

U. S. HANFORD ENGINEER WORKS

(Department, Bureau, or Establishment,)

PUBLIC VOUCHER FOR PURCHASES, AND SERVICES
OTHER THAN PERSONAL

CONTINUATION SHEET

Sheet No. of Bureau Voucher No. 1653

ARTICLES OR SERVICES

(Enter description, item Number of
Contract or General Supply Sched-
ule, and other Information deemed
necessary)

Terms.....% Discount Cash.....Days

No. and Date
of Order
APV #Date of Delivery
of Service
Check #Quantity
RPG #Unit Price
Cost PerAmount
Dollars Cts.

NON PAYMENT VOUCHER

When approved as for payment, the amount of this voucher is to be applied
against and in liquidation of the advance payment made to the contractor
under contract entered into November 6, 1943. No. W 7412 eng-1.

Bu Vou #10-918 D. O. #402 Date Feb. '43 Amt.....

Bu Vou #..... D. O. #..... Date..... Amt.....

Accounts of C. E. VandenBulek, Lt. Col., C. E. Disbursing Officer, 211-500

Sheet #2

Note.—This form to be used as a "Continuation Sheet" where more than one sheet is required, carrying
forward the total or totals to, or summarizing them upon Form No. 1034.

Total

16-26212-1

Plaintiff's Exhibit "T"—(Continued)

RG-20013

(Du Pont Cut)
Reg. U. S. Pat. Off.

E. I. DU PONT DE NEMOURS & COMPANY

Incorporated
Hanford Engineer Works
P. O. Box 429
Pasco, Washington

Information for which space is here provided must be supplied by shipper or invoice will be returned and discount calculated from date correct invoice is received.

Consigned to.....
Shipped via.....
Car No. and Initial.....
Originating Point.....
Shipping Weight.....lbs.
Bill of Lading No.....
Prepaid or Collect.....

Du Pont Vou. No. 17455
Du Pont Order No. RPG 531/2
Date 1/11/44

Seller's No. G 448

Terms :
per cent.....days.....days net

Bought of Olympic Commissary Co.
Street and No.
City and State: Hanford, Washington

Delivery
F.O.B.....

Receipted Expense Bill Must
Accompany All Charges for
Transportation

Original Bill of Lading and Two Copies Must Accompany This Invoice
or Must Be Furnished Promptly After Receipt of Shipping Instructions

Item No.	Quantity	Description	Unit Price	Amount
1/4 1	CK 3963	McClintock-Turnkey Co.	3881	5118.75
12/23 2	"	" "	2941	.66
" 3	"	" "	" FH	3.52
" 4	"	" "	"	2.86
" 5	"	" "	"	3.52
" 6	"	" "	"	3.52

Final Approval for DuPont	Approved for Du Pont for Pay- ment Only	Approved for U. S. Government	Approved for U.S. Government for Payment	Amount 5108.19 of \$5104.67 FH Invoice
By..... (Signature not legible)	By.....	By..... For Chief Fiscal Auditor	By..... For Contracting Officer	Cash Discount
CONSTRUCTION C-1	For Du Pont	Audit Schedule	For U. S. Government Initials Date	Freight
FE 27.6	OC	Extensions and Footings Verified		Net 5108.19 FH Amount \$5104.67 of Invoice
Sheet #3		Entered in Invoice Register		Check No. 25198 Jan. 20, '44
Original for U. S. Government	FH	Prices and Delivery Terms Compared with Purchase Order		
	Mat'l Rec'd as Ordered FH	Compared with Rec. Report No		
		Transportation Charge Approved		



[Endorsed]: No. 11063. United States Circuit Court of Appeals for the Ninth Circuit. Richard Roland Haugen, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Eastern District of Washington, Southern Division.

Filed July 2, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11063

RICHARD ROLAND HAUGEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS UPON WHICH AP-
PELLANT INTENDS TO RELY AND
DESIGNATION OF PARTS OF RECORD
TO BE PRINTED

Appellant, Richard Roland Haugen, for his state-
ment of points upon which he intends to rely on his
appeal to this Court from the judgment and con-
viction entered by the District Court of the United

States for the Eastern District of Washington, Southern Division, on May 7, 1945, hereby adopts the specifications of errors contained in his assignments of error filed by him on June 18, 1945.

DESIGNATION OF PARTS OF RECORD
TO BE PRINTED

Pursuant to Rule 19(6) of the Rules of this Court, appellant, Richard Roland Haugen, states that the entire record on appeal is necessary for the consideration of the appeal from the judgment and conviction herein, and that, accordingly, appellant designates for printing the entire record, including the exhibits.

Dated this 25th day of June, 1945.

ROBERTSON & SMITH

By DEL CARY SMITH Jr.

Attorneys for Appellant,

Richard Roland Haugen

Service of the foregoing statement of points on which appellant intends to rely and designation of parts of record to be printed is hereby accepted, and the receipt of a copy thereof is hereby acknowledged this 25th day of June, 1945.

EDWARD N. CONNELLY

United States Attorney, Counsel for Appellee,
United States of America.

[Endorsed]: Filed July 2, 1945. Paul P. O'Brien, Clerk.

